

H. TIM HOFFMAN, SBN 49141
ARTHUR W. LAZEAR, SBN 83603
MORGAN M. MACK SBN 212659
HOFFMAN & LAZEAR
180 Grand Avenue, Suite 1550
Oakland, CA 94612
Telephone: (510) 763-5700

CHRISTIAN HARTLEY
DANIEL M. BRADLEY
RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC
174 E. Bay Street
Charleston, SC 29401
Telephone: (843) 727-6564

THOMAS F. CAMPBELL
CAMPBELL LAW
A PROFESSIONAL CORPORATION
100 Concourse Parkway, Suite 115
Birmingham, AL 35244
Telephone: (205) 278-6650

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RONALD KRZYZANOWSKY AND
ILEANA KRYZANOWSKY on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

ORKIN EXTERMINATING COMPANY,
INC.; ROLLINS, INC.

Defendants,

Case No.: C07-05362-JLL

**DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL**

I, Daniel M. Bradley, hereby declare the following:

DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL

EXHIBIT A

EXHIBIT A

1 Mark L. Eisenhut, Bar No. 185039
Matthew R. Orr, Bar No. 211097
2 CALL, JENSEN & FERRELL
610 Newport Center Drive, Suite 700
3 Newport Beach, CA 92660
Tel: (949) 717-3000
4 Fax: (949) 717-3100
meisenhut@calljensen.com
5 morr@calljensen.com

6 Of Counsel:

7 Michael W. Davis, Esq.
Theodore R. Scarborough, Esq.
8 Kara L. McCall, Esq.
SIDLEY AUSTIN LLP
9 1 South Dearborn Street
Chicago, IL 60603
10 Tel.: (312) 853-7000
Fax: (312) 953-7036
11 tscarborough@sidley.com
kmccall@sidley.com

12 Douglas B. Brown, Esq.
13 Daniel Gerber, Esq.
RUMBERGER, KIRK & CALDWELL,
14 P.A.
Lincoln Plaza, Suite 1400
15 300 South Orange Avenue
Orlando, Florida 32802-1873
16 Tel: (407) 872-7300
Fax: (407) 941-2133
17 dbrown@rumberger.com
dgerber@rumberger.com

18 Attorneys for Defendants Orkin
19 Exterminating
Company, Inc., n/k/a/ Orkin, Inc., and
20 Rollins, Inc.

21
22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 RONALD KRZYZANOWSKI AND
25 ILEANA KRZYZANOWSKI, on behalf
of themselves and all others similarly
26 situated,

27 Plaintiffs,

28 vs.

ORKIN EXTERMINATING

) Case No. CO7-05362 SBA

) **DEFENDANTS' RESPONSES AND**
) **OBJECTIONS TO PLAINTIFFS'**
) **FIRST SET OF**
) **INTERROGATORIES AND**
) **DOCUMENTS REQUESTS**

1 COMPANY, INC.; ROLLINS, INC.,) Complaint Filed: October 19, 2007
2 Defendants. Trial Date: None Set

3
4
5 **DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS'**
6 **FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS**

7
8 Defendants, Orkin, Inc. (f/k/a Orkin Exterminating Company, Inc.)
9 and Rollins, Inc. ("Orkin" or "Defendants"), by their attorneys, hereby submit
10 their responses and objections to Plaintiffs Ronald Krzyzanowski's and Ileana
11 Krzyzanowski's ("Plaintiffs") First Set of Interrogatories and Document
12 Requests.

13 **PRELIMINARY STATEMENT**

14 Defendants do not waive and expressly reserve all objections as to the
15 genuineness, foundation, competence, relevance, materiality, privileged status, or
16 admissibility of these responses and the information and documents provided
17 therein as evidence in connection with any proceeding or at trial of this or any
18 other action, or for any other purpose.

19
20 Defendants and their attorneys have not completed their investigation
21 of the facts relating to this case and have not completed their preparation for trial.
22 These responses are made without prejudice to Defendants' right to utilize
23 subsequently discovered evidence at trial or in connection with pretrial
24 proceedings, or to amend these responses in the event that any information is
25 subsequently acquired or learned by Defendants or inadvertently omitted in these
26 responses. The majority of the documentary discovery requires extensive analysis.
27 Legal and fact research concerning the facts known to date and that which will be
28

1 known in the future remains to be done. The additional work may result in new or
2 different factual responses, objections, and defenses. Defendants expressly reserve
3 the right to amend, modify, or supplement the responses and objections stated
4 herein. Defendants further reserve the right to rely on any facts, documents, or
5 other evidence that may develop or come to Defendants' attention at a later date.
6 Defendants further reserve the right to rely on expert testimony.

7 GENERAL OBJECTIONS

8 The following objections are hereby incorporated by reference, as though
9 fully set forth therein, in each and all of the specific responses set forth below.
10

11 1. Defendants object to Plaintiffs' interrogatories and document
12 requests to the extent that they purport to impose on Defendants duties and obligations
13 that exceed, or are different from, those imposed by the applicable Rules of Civil
14 Procedure or the Local Rules of this Court.

15 2. Defendants object to Plaintiffs' interrogatories and document
16 requests to the extent that they request communications, information, or documents
17 protected by attorney-client privilege or work-product privilege; embody the thoughts,
18 mental impressions or other confidential work-product of Defendants' attorneys; or
19 request information or documents protected by any other applicable privilege or
20 immunity (collectively referred to as "Privileges"). Defendants hereby claim such
21 Privileges to the extent implicated by each interrogatory and document request, and
22 exclude privileged and protected information from their responses. An inadvertent
23 production of privileged or protected information shall not constitute a waiver of such
24 privilege and protections and shall not preclude Defendants from objecting to the use
25 of such information.
26

27 3. Defendants object to Plaintiffs' interrogatories and document
28 requests to the extent that they seek the disclosure of confidential or proprietary

1 knowledge or business or commercial information without a protective order having
2 been entered by the parties to the proceeding. Defendants will not produce any
3 documents containing confidential or proprietary information unless and until a
4 mutually agreed upon protective order has been entered.

5
6 4. Defendants object to Plaintiffs' interrogatories and document
7 requests to the extent that they are duplicative of each other and thus place an
8 unnecessary burden on Defendants.

9
10 5. Defendants object to Plaintiffs' interrogatory and document
11 requests to the extent that they seek information neither relevant to any issue in the
12 instant action nor reasonably calculated to lead to the discovery of admissible
13 evidence.

14 6. Defendants object to Plaintiffs' interrogatory and document
15 requests as unduly burdensome, oppressive, harassing, and abusive of the discovery
16 process to the extent that they seek information not in Defendants' possession,
17 custody, or control; information in Plaintiffs' possession, custody, or control;
18 information already produced to Plaintiffs; or information within the possession,
19 custody, or control of third parties or public records, and therefore equally available to
20 Plaintiffs.

21 7. Defendants object to Plaintiffs' interrogatories and document
22 requests to the extent that they call for information as to consulting experts, which is
23 privileged and protected from discovery. Similarly, Plaintiffs' interrogatories and
24 document requests are objectionable to the extent that they seek information or
25 testimony from opinion experts, which is premature, and which will be provided in
26 accordance with the Court's scheduling order.

1 8. Defendants object to Plaintiffs' interrogatories and document
2 requests as unduly burdensome to the extent that they seek information and/or
3 production of all evidence in support of Defendants' defenses to Plaintiffs'
4 allegations, prior to the date on which Defendants have been allowed to conduct the
5 discovery necessary to provide complete responses.

6 9. Defendants object to the definition of the "RELEVANT TIME
7 PERIOD" contained in Plaintiffs' interrogatories and document requests (1987 to the
8 present), as this time period of more than two decades is grossly overbroad, unduly
9 burdensome, seeks irrelevant information, and demonstrates a lack of good faith in
10 discovery. Specifically, Defendants object to producing information or documents
11 from more than four years before this suit was filed, or October 2003, because any
12 claims that arose prior to that date are barred by the applicable statute of limitations,
13 the longest of which is four years.¹ Defendants remain willing to work with Plaintiffs
14 on an agreed upon length of time.

15 10. Defendants object to Plaintiffs' interrogatories and document
16 requests to the extent that they seek information or documents that regard putative
17 class members before any class has been certified. Further, Defendants would be
18 required to review potentially tens of thousands of individual customer files, interview
19 employees, and engage experts to view and inspect the property of each putative class
20 member if we are required to identify defenses or answer interrogatories about each
21 member.

22
23 ¹ Count I of the Complaint for breach of contract and warranty is subject to a four-year statute of
24 limitations, while claims in Counts II, III, and IV all sound in tort and are subject to a one- or two-
25 year limitations period. See Cal. Code of Civil Procedure §§ 337 (contract), 335.1 (tort); *Krupnick v.*
26 *Duke Energy Morro Bay, L.L.C.* 115 Cal. App. 4th 1026, 9 Cal. Rptr. 3d 767 (Cal. Ct. App. 2004)
27 (holding that § 335.1 is not retroactive and that claims accrued before January 1, 2003, are subject to
28 the former one-year statute of limitations). The statute of limitations for Counts V and VI, which
allege violations of the Business and Professions Code, is four years; the statute of limitations for
Count VII's claim for violation of the Consumers Legal Remedies Act is three years. See Cal.
Business and Professions Code § 17208; Cal. Civil Code § 1783. Finally, California's catch-all
statute of limitations is four years. Cal. Code of Civil Procedure § 343.

1 putative class member. Such pre-certification discovery would be premature, and
2 incredibly wasteful.

3 11. Defendants object to Plaintiffs' interrogatories and document
4 requests to the extent that they are not limited in geographic scope. Defendants
5 further object to providing documents regarding any state other than California
6 because the putative class is limited to California customers of Orkin. Requests for
7 documents or information not related to California are irrelevant and not likely to lead
8 to the discovery of admissible evidence, grossly overbroad, and unreasonably
9 burdensome.

10
11 12. Defendants object to Plaintiffs' interrogatories and document
12 requests in that that they define "Wood Destroying Organism" and "WDO Services"
13 to encompass services broader than subterranean termite control services, which are
14 the only services at issue in this action. (See Complaint at ¶¶ 1, 21.) Defendants
15 further object to the foregoing definitions on grounds of standing, as the named
16 Plaintiffs contracted for subterranean termite treatment only. Treatment for non-
17 subterranean termites and other wood destroying organisms is fundamentally different
18 than treatment for subterranean termites.

19 13. The fact that Defendants have responded or objected to an
20 interrogatory or document request or any part thereof should not be taken as an
21 admission of the existence of any information or documents described or assumed.
22 Defendants are not representing that any information or document actually exists, but
23 rather that they are making a good faith search and attempt to ascertain whether
24 information or documents responsive to the request exists, and if so, what they will
25 provide.

26
27 14. Responses to any interrogatories or production of any document by
28 Defendants in response to an interrogatory or document request or any portion thereof,

1 or the voluntary provision of information or documents not precisely called for by an
2 individual interrogatory or document request, is not to be deemed a waiver of the right
3 to object to the provision of other information or the production of other documents of
4 the kind called for in a given interrogatory or document.

5 15. Orkin objects to Plaintiffs' request that all documents be produced
6 in their native format. Such a request is both unduly burdensome and unnecessary
7 given the general nature of the documents requested. Orkin, however, will agree to
8 work with Plaintiffs to reach agreement as to a proper format for production,
9 depending on the type of document and its source.

10 16. Defendants object to providing information or documentation from
11 the files of customers other than the named Plaintiffs because it is confidential and
12 proprietary and, therefore, not the proper subject of discovery.

13 17. Defendants object to re-producing documents that are the subject
14 of the parties' letter of agreement of June 5, 2008.

15 **SPECIFIC OBJECTIONS AND RESPONSES**

16 **Subject to and without waiving or limiting the above-asserted**
17 **General Objections and incorporating each and every objection by reference into**
18 **each of the responses below**, Defendants further respond to each interrogatory and
19 document request as follows:

20 **INTERROGATORIES**

21 **Interrogatory No. 1:** During the RELEVANT TIME PERIOD,
22 IDENTIFY each person or entity who purchased, received, was transferred, assumed,
23 novated, or otherwise obtained rights under any WDO SERVICES contract with
24 DEFENDANTS in California which was annually renewable or renewable on some
25 other periodic basis.

1 **Response to Interrogatory No. 1:** Defendants object to this
2 interrogatory because it is overly broad and calls for the production of irrelevant
3 information that is not likely to lead to the discovery of admissible evidence. Among
4 other reasons, the information sought is completely irrelevant to the named Plaintiffs'
5 individual claims or to the issue of whether class certification is appropriate. Prior to
6 class certification the facts and circumstances surrounding the merits of each
7 individual putative class member's claims are irrelevant to any of the elements of Rule
8 23 and whether a class should be certified. *See Eisen v. Carlisle and Jacquelin*, 417
9 U.S. 156, 177 (1974); *see also Hanon v. Dataproducts Corp.*, 976 F.2d 497, 509 (9th
10 Cir. 1992). Moreover, the request is burdensome because it would require a file-by-
11 file review of over ten thousand files; Orkin does not have computerized records
12 sufficient to identify every person listed in the interrogatory for the entire
13 RELEVANT TIME PERIOD. Subject to and without waiving the foregoing and
14 General Objections, Defendants state they will supplement this interrogatory response
15 to provide the number of active subterranean termite contracts for customers in
16 California between October 2003 and the date of filing of Plaintiffs' Complaint.

17
18 **Interrogatory No. 2:** IDENTIFY all customers of DEFENDANTS
19 during the RELEVANT TIME PERIOD who fit the class definition in the
20 COMPLAINT and who have already commenced an individual civil action or action
21 in arbitration against any DEFENDANT relating to the subject matter of this
22 litigation.

23 **Response to Interrogatory No. 2:** Defendants object to this
24 interrogatory because it seeks irrelevant information not reasonably calculated to lead
25 to the discovery of admissible evidence. Among other reasons, this request seeks
26 information regarding disputes that have been settled and, therefore, the plaintiffs in
27 such actions are not members of the putative class; in addition, the merits, *vel non*, of
28 their individual claims are irrelevant to whether the elements of Fed. R. Civ. P. 23

1 could be satisfied in this case. Defendants further object on the ground that the
2 phrases "relating to the subject matter of this litigation" and "fit the class definition"
3 are vague and ambiguous, calling for speculation. Moreover, the request is
4 burdensome because it would require a file-by-file review because Orkin does not
5 have computerized records sufficient to identify every person listed in the
6 interrogatory for the entire RELEVANT TIME PERIOD. Subject to and without
7 waiving the foregoing and General Objections, Defendants state that, between October
8 2003 and the filing of this Complaint, and excluding small claims matters, Orkin has
9 only been sued once in California relating to termite treatment and that action was
10 settled before this action was filed.

11
12 **Interrogatory No. 3:** IDENTIFY all customers of DEFENDANTS
13 during the RELEVANT TIME PERIOD who fit the class definition in the
14 COMPLAINT and who have signed a release of claims (or any other DOCUMENT
15 which may relieve DEFENDANTS of potential legal obligations) related to WDO
16 services, WDO infestation or WDO damage.

17 **Response to Interrogatory No. 3:** Defendants object to this
18 interrogatory because it is overly broad, unduly burdensome, and seeks irrelevant
19 information not reasonably calculated to lead to the discovery of admissible evidence.
20 Among other reasons, the request is improper because it seeks information about
21 individual putative class members, which is completely irrelevant prior to class
22 certification. Moreover, this interrogatory is unduly burdensome because any releases
23 responsive to this request are not maintained in a central location but, rather, are
24 maintained in over ten thousand individual customer or claim files, requiring a file-by-
25 file review. Subject to and without waiving the foregoing and General Objections,
26 and pursuant to Fed. R. Civ. P. 33(d), Defendants will produce manuals identified in
27 response to Interrogatory 10 that contain exemplar releases that may have been used
28

1 in the course of Orkin's subterranean termite treatment business in California between
2 October 2003 and the filing of the Complaint.

3
4 **Interrogatory No. 4:** IDENTIFY all customers of DEFENDANTS
5 during the RELEVANT TIME PERIOD who fit the class definition in the
6 COMPLAINT and for whom DEFENDANTS maintain they have defenses for non-
7 payment, breach of contract, or other claims or defenses excusing DEFENDANTS'
8 performance, liability, and/or limiting damages under a WDO SERVICE contract.

9 **Response to Interrogatory No. 4:** Defendants object to this
10 interrogatory because it is overly broad, unduly burdensome, and calls for irrelevant
11 information not reasonably calculated to lead to the discovery of admissible evidence.
12 In particular, this interrogatory is unduly burdensome because it would require, at a
13 minimum, for over ten thousand putative class members: (1) a review of each branch
14 file for each putative class member; (2) interviews with current and former branch
15 employees; (3) discovery from each putative class member; and (4) a property
16 inspection of each property. Moreover, prior to class certification, the merits of each
17 putative class member's claim are irrelevant. The purpose of the class certification
18 inquiry under Fed. R. Civ. P. 23 is to determine whether there is a common body of
19 proof that would permit the named Plaintiffs, in proving their own claims, to
20 necessarily prove the claims of all other absent class members. *See In re Rubber*
21 *Chemicals Antitrust Litig.*, 232 F.R.D. 346, 352 (N.D. Cal. 2005). With few
22 exceptions, none of which are applicable here, the merits of the claims of the putative
23 class members are not relevant to the class certification inquiry. *See Eisen*, 417 U.S.
24 at 177; *see also Hanon*, 976 F.2d at 509. Defendants further object to the extent that
25 the request invades the financial privacy of Defendants' customers.

26
27 **Interrogatory No. 5:** Describe, in detail and with specificity, each fact
28 which supports each claim or defense DEFENDANTS claim they have as to each

1 customer or property identified in response to Interrogatory Number 4 and, as to each
2 customer or property, IDENTIFY the person with the most knowledge of such claims
3 or defenses.

4 **Response to Interrogatory No. 5:** Defendants hereby incorporate by
5 reference their Response to Interrogatory No. 4.

6
7 **Interrogatory No. 6:** Describe, in detail and with specificity, including
8 itemizations and calculations of how much money it would cost to reimburse
9 Plaintiffs and all other members of the Class as defined in the COMPLAINT for all
10 monies paid to DEFENDANTS during the RELEVANT TIME PERIOD plus pre-
11 judgment interest, and IDENTIFY all persons and entities all DOCUMENTS
12 consulted or referenced in answering this request.

13 **Response to Interrogatory No. 6:** Defendants object to this
14 interrogatory because it is overly broad, unduly burdensome, and seeks irrelevant
15 information not reasonably calculated to lead to the discovery of admissible evidence.
16 Among other reasons, the request is improper because Plaintiffs have not yet
17 identified their theory of damages, and because the facts regarding reimbursements
18 owed to particular members are completely irrelevant prior to class certification.
19 Defendants further object on the ground that the interrogatory is vague and ambiguous
20 because it does not specify for what Plaintiffs are seeking reimbursement, nor what
21 they mean by "cost to reimburse" all putative class members. Defendants further
22 object to the request to calculate putative damages or "pre-judgment interest" because
23 it calls for legal analysis or expert testimony and cannot be determined on the basis of
24 year-end reports.

25
26 **Interrogatory No. 7:** Describe, in detail and with specificity, including
27 itemizations and calculations of all assets of DEFENDANTS or other sources
28 available to DEFENDANTS to pay the totals of the money calculated in response to

1 Interrogatory Number 6 should DEFENDANTS be ordered to pay them and
2 IDENTIFY all persons, entities, and DOCUMENTS consulted or referenced in
3 answering this request.

4 **Response to Interrogatory No. 7:** Defendants hereby incorporate by
5 reference their Response to Interrogatory No. 6. Subject to and without waiving the
6 foregoing and General Objections, and pursuant to Fed. R. Civ. P. 33(d), Defendants
7 will make available for inspection and copying at a mutually agreeable time and place
8 all annual financial reports filed with the SEC (Form 10-K) for 2003, 2004, 2005,
9 2006, and 2007.

10
11 **Interrogatory No. 8:** IDENTIFY by name, product label and effective
12 dates (and dates of any revisions of product label), all liquid chemical termiticides and
13 "baiting" systems used for purposes of preventing or controlling subterranean
14 (ground) termites at DEFENDANTS' initial issuance of a WDO SERVICE contract or
15 plan to its customers during the RELEVANT TIME PERIOD.

16 **Response to Interrogatory No. 8:** Defendants object to this request as
17 vague and ambiguous. It is also overly broad and not reasonably restricted as to time,
18 location, or subject matter and, therefore, calls for irrelevant information not
19 reasonably calculated to lead to the discovery of admissible evidence. Without
20 limiting the foregoing, the request is improper because it covers a twenty-one year
21 period well beyond the application limitations period, and covers wood-destroying
22 organisms other than subterranean termites. Subject to and without waiving the
23 foregoing and General Objections, and pursuant to Fed. R. Civ. P. 33(d), Defendants
24 will make available for inspection and copying at a mutually agreeable time and place
25 labels for products used to treat subterranean termites in California between October
26 2003 and the present. In addition, Defendants will provide a preliminary list of the
27 names of the relevant products and the approximate dates they were used in
28 California:

	Termiticide / Bait / Monitoring System / Borates	Active Ingredient	Manufacturer
1999	Prelude	Permethrin Pyrethroid	Zeneca
1999 2002	Tim-bor	Disodium Octaborate Tetrahydrate	Nisus
2000 2001 2002 2003 2004 2005 2006 2007 2008	First Line	Sulfluramid	FMC
2000 2001 2002 2003	Premise 0.5 SC and Premise 75 WP	Imidacloprid Pyrethroid	Bayer
2002	Bora-Care	Disodium Octaborate Tetrahydrate	Nisus

	Termiticide / Bait / Monitoring System / Borates	Active Ingredient	Manufacturer
2003			
2004	Termidor SC		
2005	Termidor 80 WG	Fipronil	Aventis
2006	(Pretreatments only)	Fiprole	
2007			
2008			

Interrogatory No. 9: IDENTIFY by name, product label and effective dates (and dates of any revisions of product label), all liquid chemical termiticides and “baiting” systems used for purposes of preventing or controlling subterranean (ground) termites for purposes other than DEFENDANTS’ initial issuance of a WDO SERVICE contract or plan to its customers during the RELEVANT TIME PERIOD.

Response to Interrogatory No. 9: Defendants incorporate by reference herein their Response to Interrogatory No. 8.

Interrogatory No. 10: Describe, in detail and with specificity, DEFENDANTS’ policies, practices, procedures, guidelines or standards during the RELEVANT TIME PERIOD for determining how treatment is actually to be performed in order to place a structure under a WDO SERVICE contract or bond, including, but not limited to, how any information is taken from field notes, an initial graph, or inspection report or other source, to a job work order or other DOCUMENT specifying the work to be performed at the property, and IDENTIFY the RELEVANT

1 TIME PERIODS that any such policies, practices, procedures, guidelines or standards
2 were effective, were in use, were changed, or were available for use.

3 **Response to Interrogatory No. 10:** Defendants object to this
4 interrogatory because it is overly broad and calls for irrelevant information not
5 reasonably calculated to lead to the discovery of admissible evidence. Without
6 limiting the foregoing, the request covers twenty years and all wood-destroying
7 organisms even though the Complaint is limited to subterranean termites. Defendants
8 further object to this interrogatory on the ground that the phrases "how treatment is
9 actually to be performed," and "how any information is taken from field notes, an
10 initial graph, [etc.]" are vague and ambiguous, calling for speculation. Defendants
11 further object to the request to identify, without substantive limitation, all changes in
12 policies, practices, procedures, guidelines, or standards, on grounds that it would be
13 unduly burdensome to do so, and because the production of such information is not
14 likely to lead to the discovery of admissible evidence.

15 Subject to and without waiving the foregoing and General Objections,
16 and pursuant to Fed. R. Civ. P. 33(d), on or about May 9 and 12, 2008, Defendants
17 produced copies of numerous documents that reflect Orkin's general policies and
18 practices regarding the treatment of subterranean termites in California. (See Focus 1-
19 3540; K-LP 1-2733; K-SA 1-274; K-TB 1-268; TTEM 1-979). In addition, Orkin has
20 produced other general policy and practice documents in connection with *McCord*
21 *Properties, Ltd., et al. v. Orkin Exterminating Co., Inc.*, No. 2002-4981 (Jefferson
22 County); *Junkin v. Orkin Exterminating Co., Inc.*, No. CV-2001-1038 (Tuscaloosa
23 County); *Knopf v. Orkin Exterminating Co., Inc.*, No. CV04-2693 (Jefferson County);
24 and *Hanson v. Orkin Exterminating Co., Inc.*, No. CV01-06 (Tallapoosa County).
25 Subject to Plaintiffs' countersignature, pursuant to a letter agreement dated June 5,
26 2008 (the "Letter Agreement"), Orkin has permitted Plaintiffs to use those documents
27 in this action (consistent with the terms of that Letter Agreement) and Plaintiffs have
28 agreed that Orkin need not reproduce such documents. In addition, to the extent

1 Defendants have not already done so, and to the extent that the following exist,
2 Defendants will make available for inspection and copying at a mutually agreeable
3 time and place the Orkin: (1) Termite Treatment Expectations Manual; (2) FOCUS
4 Administrative Manual; (3) General Office Procedure Manual; (4) The Orkin
5 Professional Initial Termite Control Training Manual; (5) Initial Termite Treatment
6 Control Training Certified Field Trainer Handbook; (6) Service Manager(s) Manual;
7 (7) Branch Manager Manual; (8) Region Manager Manual; (9) Sales Training Manual;
8 (10) Service Alerts; (11) Technical Bulletin; and (12) Lesson Plans. Defendants will
9 produce the foregoing documents for the period October 2003 to the present as they
10 relate to the allegations of the Complaint and to the extent not previously produced to
11 Plaintiffs' counsel.

12
13 **Interrogatory No. 11:** Describe, in detail and with specificity,
14 DEFENDANTS' policies, practices, procedures, guidelines or standards during the
15 RELEVANT TIME PERIOD for recording treatment work done at a structure on an
16 application record, or other document(s) used to record such information, and
17 IDENTIFY the RELEVANT TIME PERIODS that any such policies, practices,
18 procedures, guidelines, standards or form documents were effective, were in use, were
19 changed, or were available for use.

20 **Response to Interrogatory No. 11:** Defendants object to this
21 interrogatory because it is overly broad and calls for irrelevant information not
22 reasonably calculated to lead to the discovery of admissible evidence. Defendants
23 further object on the ground that the phrase "recording treatment work done at a
24 structure on an application record, or other document(s)" is vague and ambiguous,
25 calling for speculation. Defendants further object to the request to identify, without
26 substantive limitation, all changes in policies, practices, procedures, guidelines, or
27 standards, on grounds that it would be unduly burdensome to do so, and because the
28 production of such information is not likely to lead to the discovery of admissible

1 evidence. Subject to and without waiving the foregoing and General Objections,
2 Defendants direct Plaintiffs to the documents identified in their Response to
3 Interrogatory No. 10.

4 **Interrogatory No. 12:** Describe, in detail and with specificity,
5 DEFENDANTS' policies, practices and procedures during the RELEVANT TIME
6 PERIOD for acquiring a waiver from its customers of any termite treatment standards
7 originating from any source, including but not limited to product label directions,
8 regulatory requirements, or DEFENDANTS' own company standards, and
9 IDENTIFY THE RELEVANT TIME PERIODS that any such policies, practices or
10 procedures were effective, were in use, were changed, or were available for use.

11 **Response to Interrogatory No. 12:** Defendants object to this
12 interrogatory because it is overly broad and seeks irrelevant information not
13 reasonably calculated to lead to the discovery of admissible evidence. Among other
14 reasons, the information sought is irrelevant because no claims or issues regarding
15 "waivers" are identified in the Plaintiffs' Complaint. Defendants further object on
16 grounds that the phrase "a waiver from its customers of any termite treatment
17 standards originating from any source" is vague and ambiguous, calling for
18 speculation. Moreover, Defendants object to the request to identify, without
19 substantive limitation, all changes in policies, practices, procedures, guidelines or
20 standards, on grounds that it would be unduly burdensome to do so, and because the
21 production of such information is not likely to lead to the discovery of admissible
22 evidence. Subject to and without waiving the foregoing and General Objections,
23 Defendants direct Plaintiffs to the documents identified in their Response to
24 Interrogatory No. 10.

25
26 **Interrogatory No. 13:** Describe, in detail and with specificity,
27 DEFENDANTS' policies, practices and procedures during the RELEVANT TIME
28 PERIOD regarding internal use of information collected at inspections at structures

1 for all purposes involved in provision of WDO SERVICES to prospective, new or
2 existing customers, including but not limited to any internal categorization of
3 inspections (for example sales inspection, initial inspection, annual renewal
4 inspection, inspection for suspected infestation or damage, quality audit inspections
5 by branch managers, or other), and for the disclosure of any such information to
6 customers, and IDENTIFY the RELEVANT TIME PERIODS that any such policies,
7 practices and procedures were effective, were in use, were changed, or were available
8 for use.

9 **Response to Interrogatory No. 13:** Defendants object to this
10 interrogatory because it is overly broad and seeks irrelevant information not
11 reasonably calculated to lead to the discovery of admissible evidence. Defendants
12 further object on grounds that the phrase "internal use" of information is vague and
13 ambiguous, calling for speculation. Defendants further object to the request to
14 identify, without substantive limitation, all changes in policies, practices, procedures,
15 guidelines, or standards, on grounds that it would be unduly burdensome to do so, and
16 because the production of such information is not likely to lead to the discovery of
17 admissible evidence. Subject to and without waiving the foregoing and General
18 Objections, Defendants direct Plaintiffs to the documents identified in their Response
19 to Interrogatory No. 10.

20
21 **Interrogatory No. 14:** Describe, in detail and with specificity, and
22 IDENTIFY by name all advertising campaigns used by DEFENDANTS in the State
23 of California during the RELEVANT TIME PERIOD which relate to WDO
24 SERVICES and IDENTIFY each time period when each was used by month(s) and
25 year(s).

26 **Response to Interrogatory No. 14:** Defendants object to this
27 interrogatory because it is overly broad and calls for irrelevant information not
28 reasonably calculated to lead to the discovery of admissible evidence. Among other

1 reasons, this request seeks information about advertisements that Plaintiffs testified on
2 May 20 and 22 that they never saw or heard; therefore, they have no standing to assert
3 claims based on such advertisements. Defendants further object to this interrogatory
4 on the ground that what is meant by "advertising campaigns" is vague and ambiguous,
5 calling for speculation. Subject to and without waiving the foregoing and General
6 Objections, and pursuant to Fed. R. Civ. P. 33(d), Defendants will make available for
7 inspection and copying sales brochures for subterranean termite treatments, including
8 monitoring and baiting, that were used in California between 2003 and the present.

9 **Interrogatory No. 15:** Describe, in detail and with specificity, the
10 subject matter of any investigation of DEFENDANTS by regulatory agencies, state
11 Departments of Agriculture or any Federal agency, department, or commission, etc.
12 during the RELEVANT TIME PERIOD related to complaints regarding
13 DEFENDANTS' WDO SERVICES, DEFENDANTS' business practices, or
14 DEFENDANTS' advertising, all limited to investigations more broad in scope than
15 investigation of a customer complaint regarding WDO SERVICES performed at a
16 single structure.

17 **Response to Interrogatory No. 15:** Defendants object to this
18 interrogatory because it is overly broad and calls for irrelevant information not
19 reasonably calculated to lead to the discovery of admissible evidence. Among other
20 reasons, the request is not limited to the allegations of the Complaint (indeed, it is not
21 even limited to subterranean termites) but, rather, seeks information regarding
22 investigations on just about any conceivable topic for the past twenty-one years in any
23 state in the country. Defendants further object on grounds that the phrase
24 "investigations more broad in scope than investigation of a customer complaint
25 regarding WDO SERVICES performed at a single structure" is vague and ambiguous,
26 calling for speculation. Subject to and without waiving the foregoing and General
27 Objections, Defendants state that, other than routine inquiries a pest control operator
28 may receive from time to time in connection with a particular customer question or

1 complaint, the State of California, including the State Attorney General, the Structural
2 Pest Control Board, or the California Environmental Protection Agency have not
3 undertaken any investigation of Orkin's termite treatment business or practices in
4 California between October 2003 and the present.

5
6 **Interrogatory No. 16:** Describe, in detail and with specificity, the
7 methods used during the RELEVANT TIME PERIOD to provide uniform relief to
8 DEFENDANTS' customers pursuant to settlements, consent decrees and/or plea
9 agreements between DEFENDANTS and state Departments of Agriculture, regulatory
10 agencies or any Federal agency, department, commission, etc.

11 **Response to Interrogatory No. 16:** Defendants object to this
12 interrogatory because it is overly broad and calls for irrelevant information not
13 reasonably calculated to lead to the discovery of admissible evidence. Among other
14 reasons, the request is not limited to the allegations of the Complaint (indeed, it is not
15 even limited to subterranean termites) but, rather, seeks information regarding
16 investigations on just about any conceivable topic for the past twenty-one years in any
17 state in the country. Defendants further object to this request because the phrases
18 "uniform relief," and "etc." are vague and ambiguous, calling for speculation. Subject
19 to and without waiving the foregoing and General Objections, Defendants state that
20 they have not entered into any settlements, consent decrees, or plea agreements with
21 any governmental body regarding Orkin's termite treatment business or practices in
22 California subsequent to October 2003.

23
24 **Interrogatory No. 17:** Describe, in detail and with specificity, how,
25 during the RELEVANT TIME PERIOD, DEFENDANTS' licensed employees and
26 agents assure DEFENDANTS' unlicensed employees' and agents' proper observation
27 and carrying out of DEFENDANTS' policies, practices, and procedures as evidenced
28 by DOCUMENTS responsive to Requests for Production 45 and 46.

1 **Response to Interrogatory No. 17:** Defendants object to this
2 interrogatory because it is overly broad and calls for irrelevant information not
3 reasonably calculated to lead to the discovery of admissible evidence. Defendants
4 further object to the terms “unlicensed employee” and “proper observations” as vague
5 and ambiguous, calling for speculation. Subject to and without waiving the foregoing
6 and General Objections, Orkin states that as a matter of policy, Orkin uses only
7 properly licensed employees to perform pest control activities that require such
8 licensure. Orkin requires both new and existing employees to meet state training and
9 licensure requirements, as well as its own internal training requirements, which in
10 many instances exceed the requirements of state governments. Orkin’s training
11 policies and procedures are being produced pursuant to Fed. R. Civ. P. 33(d) in
12 response to Interrogatory No. 10.

13 **Interrogatory No. 18:** Describe, in detail and with specificity,
14 DEFENDANTS’ procedures, policies, and process(es) with regard to assuring that
15 their advertising during the RELEVANT TIME PERIOD and as described by
16 DEFENDANTS in responses to requests throughout this pleadings, and the statements
17 or representations therein concerning structural pest control were not unfair,
18 deceptive, untrue, or misleading pursuant to Regulation 1999.5. The response to this
19 request should include but not be limited to any investigations of the bases of any
20 statement or representation to assure it is not unfair, untrue, deceptive, or misleading.

21 **Response to Interrogatory No. 18:** Defendants object to this
22 interrogatory because it is overly broad and calls for irrelevant information not
23 reasonably calculated to lead to the discovery of admissible evidence. Among other
24 reasons, this request seeks information about advertisements that Plaintiffs testified on
25 May 20 and 22 that they never saw or heard; therefore, they have no standing to assert
26 claims based on such advertisements.

1 **Interrogatory No. 19:** Describe in detail and with specificity how,
2 during the RELEVANT TIME PERIOD, DEFENDANTS' WDO SERVICES
3 inspectors (of each classification) were paid and IDENTIFY the relevant time period
4 that each payment method was in use.

5 **Response to Interrogatory No. 19:** Defendants object on grounds that
6 this interrogatory is overly broad and calls for the production of irrelevant information
7 not reasonably calculated to lead to the discovery of admissible evidence. Among
8 other reasons, the interrogatory is improper because it requests information about
9 inspectors that had no connection or involvement whatsoever with the treatment or
10 inspection of Plaintiffs' property. Subject to and without waiving the foregoing and
11 General Objections, and pursuant to Fed. R. Civ. P. 33(d), Defendants will make
12 available for inspection and copying documents sufficient to identify how inspectors
13 who performed inspections for subterranean termites were compensated between
14 October 2003 and the present.

15 **Interrogatory No. 20:** Describe in detail and with specificity how,
16 during the RELEVANT TIME PERIOD, DEFENDANTS' WDO SERVICES branch
17 managers and their corresponding district or region managers, vice presidents,
18 department heads, presidents, and other executives were paid and/or received bonus
19 pay and IDENTIFY the relevant time period that each payment method was in use.

20 **Response to Interrogatory No. 20:** Defendants object to this
21 interrogatory on grounds that the request is overly broad and calls for the production
22 of irrelevant information not reasonably calculated to lead to the discovery of
23 admissible evidence. Among other reasons, it requests information about employees
24 or executives that had no connection or involvement whatsoever with the treatment or
25 inspection of Plaintiffs' property. It also seeks to harass Defendants regarding the
26 compensation of more senior officers and executives, which is irrelevant to any issue
27 raised in the Complaint. Subject to and without waiving the foregoing and General
28 objections, Defendants will make available for inspection and copying documents

1 sufficient to identify how termite service and branch managers were compensated
2 between October 2003 and the present.

3
4 **Interrogatory No. 21.** IDENTIFY all members of the Class as identified
5 in the complaint whose WDO SERVICE contracts or services were acquired by the
6 DEFENDANTS' during the RELEVANT TIME PERIOD from any person or entity,
7 whether DEFENDANTS' provision of services under any such contracts or issuance
8 of a new contract to such customers is characterized as a purchase or acquisition of
9 their contracts, as a pick-up of any such contracts or services, a buyout, or any other
10 characterization effectively resulting in DEFENDANTS' taking over provision of
11 WDO SERVICES for any such customers

12 **Response to Interrogatory No. 21:** Defendants object to this
13 interrogatory on grounds that it is overly broad and calls for the production of
14 irrelevant information not reasonably calculated to lead to the discovery of admissible
15 evidence. Among other reasons, the request is improper because any contracts that
16 putative class members entered with termite treatment companies prior to Orkin are
17 not the contracts at issue in this lawsuit. Defendants further object to this
18 interrogatory on the ground that the request is unduly burdensome to the extent that it
19 requires a contract-by-contract, file-by-file review. Subject to and without waiving
20 the foregoing and General Objections, the only acquisitions in California after October
21 2003 were as follows, listed by name, location, and date of acquisition: (1) Urban
22 Entomology Associates, San Dimas, CA, January 1, 2006; (2) Pacific Pest Control,
23 San Clemente, CA, March 3, 2006; (3) Providence Pest Control, San Mateo, CA, May
24 18, 2006; (4) Jim Batchelor Exterminating, San Luis Obispo, CA, November 7, 2006;
25 and (5) Bull's Eye Pest Control (purchase of pest control accounts only), San Diego,
26 CA, August 31, 2007.

27
28 **DOCUMENT REQUESTS**

1
2 **Document Request No. 1:** Please produce all documents and things
3 relating, in any way, to each property and to each person or entity identified in
4 response to Interrogatory Number 1 which are reasonably necessary to determining
5 what representations were made to customers concerning the performance and quality
6 of WDO SERVICES and which are reasonably necessary to determining whether
7 initial and all subsequent WDO SERVICES were performed in compliance with
8 applicable product labels, DEFENDANTS' own policies and procedures, and with
9 applicable laws and regulations. This response should include, but is not limited to,
10 contracts, graphs, reports of any kind, completion certificates, chemical or "bait" use
11 records, all directly-mailed billing documents, correspondence, and advertising
12 materials, etc. from the following, non-exhaustive list of sources: customer files,
13 property files, branch files, region files, district files, claim files, home office or home
14 office department files, complaint files (whether individual or state or federal or any
15 combination), computer data storage systems or programs, etc.

16 **Response to Document Request No. 1:** Defendants object to this
17 request because, taken as a whole, it is vague and incomprehensible, calling for
18 speculation. In addition, it is overly broad and calls for the production of irrelevant
19 information that is not likely to lead to the discovery of admissible evidence. Among
20 other reasons, the information sought (1) is completely irrelevant to the named
21 Plaintiffs' individual claims or to the issue of whether class certification is
22 appropriate, (2) covers over twenty years of termite customers whose claims are
23 clearly time-barred, and (3) and is not limited to subterranean termites. Moreover, the
24 request would be effectively impossible to answer (and therefore is burdensome)
25 because it would require interviews with possibly hundreds of employees, if not more,
26 to determine, if possible, what representations they made to individual customers and
27 would require a file-by-file review of over ten thousand customer files. Additionally,
28 information relating to other customers is confidential and proprietary and, therefore,

1 not the proper subject of discovery. Defendants further object to the term "things"
 2 and the phrase "reasonably necessary to determining," as vague and ambiguous,
 3 calling for speculation.

4
 5 **Document Request No. 2:** Produce all DOCUMENTS and things
 6 relating in any way to DEFENDANTS' policies, practices and/or procedures during
 7 the RELEVANT TIME PERIOD regarding performance of WDO SERVICES,
 8 including but not limited to, sales, inspection services, treatment services, "bait"
 9 services, retreatment services, damage or other claims, and other services necessary to
 10 protect the properties of customers from WDOs and IDENTIFY the RELEVANT
 11 TIME PERIODS that any such policies, practices and procedures were effective, in
 12 use, were changed, or were available for use.

13 **Response to Document Request No. 2:** Defendants object to this
 14 request because it is overly broad and calls for irrelevant information not reasonably
 15 calculated to lead to the discovery of admissible evidence. Among other reasons, the
 16 information sought covers over twenty years and is not limited to subterranean
 17 termites. Defendants further object on grounds of relevance, attorney/client privilege,
 18 and the work-product doctrine to the extent that the request seeks documents
 19 regarding how "claims" are handled. Defendants further object that the request to
 20 "identify" certain time periods is an improper document request.² Defendants further
 21 object to the term "things" and the phrases "other services necessary to protect the
 22
 23

24 ² Many of Plaintiffs' document requests are accompanied by a request for "identification"
 25 of the time periods during which the requested documents were effective, in use, changed,
 26 or available for use. Requests for identification fall within the province of interrogatories
 27 because they seek information rather than documentation. Because Fed. R. Civ. P. 33(a)(1)
 28 caps the number of interrogatories that a party may serve at 25, Plaintiffs should not be
 permitted to circumvent that cap by adding additional interrogatories under the guise of
 document requests.

1 properties of customers” and “relating in any way to Defendants’ policies” because
2 they are vague and ambiguous, calling for speculation.

3 Subject to and without waiving the foregoing and General Objections, on
4 or about May 9 and 12, 2008, defendants produced copies of numerous documents
5 that reflect Orkin’s general policies and practices regarding the treatment of
6 subterranean termites in California. (See Focus 1-3540; K-LP 1-2733; K-SA 1-274;
7 K-TB 1-268; TTEM 1-979). In addition, Orkin has produced other general policy and
8 practice documents in connection with *McCord Properties, Ltd., et al. v. Orkin*
9 *Exterminating Co., Inc.*, No. 2002-4981 (Jefferson County); *Junkin v. Orkin*
10 *Exterminating Co., Inc.*, No. CV-2001-1038 (Tuscaloosa County); *Knopf v. Orkin*
11 *Exterminating Co., Inc.*, No. CV04-2693 (Jefferson County); and *Hanson v. Orkin*
12 *Exterminating Co., Inc.*, No. CV01-06 (Tallapoosa County). Subject to Plaintiffs’
13 countersignature, pursuant to a letter agreement dated June 5, 2008, Orkin has
14 permitted Plaintiffs to use those documents in this action (consistent with the terms of
15 that Letter Agreement) and Plaintiffs have agreed that Orkin need not reproduce such
16 documents. In addition, to the extent Defendants have not already done so, and to the
17 extent that the following exist, Defendants will make available for inspection and
18 copying at a mutually agreeable time and place the Orkin: (1) Termite Treatment
19 Expectations Manual; (2) FOCUS Administrative Manual; (3) General Office
20 Procedure Manual; (4) The Orkin Professional Initial Termite Control Training
21 Manual; (5) Initial Termite Treatment Control Training Certified Field Trainer
22 Handbook; (6) Service Manager(s) Manual; (7) Branch Manager Manual; (8) Region
23 Manager Manual; (9) Sales Training Manual; (10) Service Alerts; (11) Technical
24 Bulletin; and (12) Lesson Plans. Defendants will produce the foregoing documents
25 for the period October 2003 to the present as they relate to the allegations of the
26 Complaint and to the extent not previously produced to Plaintiffs’ counsel.

1 **Document Request No. 3:** Produce exemplars of all form documents
2 available for use by DEFENDANTS during the RELEVANT TIME PERIOD in the
3 sale of and the subsequent provision of WDO SERVICES, whether or not actually
4 used, and IDENTIFY the RELEVANT TIME PERIODS that any such documents
5 were in use, were changed, or were available for use by DEFENDANTS. (Footnote
6 from original omitted.)

7 **Response to Document Request No. 3:** Defendants object to this
8 request because it is overly broad and calls for irrelevant information not reasonably
9 calculated to lead to the discovery of admissible evidence. Among other reasons, it
10 seeks documents over a twenty-year period, is not limited to subterranean termites,
11 and seeks documents "whether or not actually used." Defendants further object that
12 the request to "identify" certain time periods is an improper document request.
13 Subject to and without waiving the foregoing and General Objections, Defendants
14 agree to produce (1) contracts, including graphs, with the named Plaintiffs; (2) form
15 subterranean contracts used in California subsequent to October 2003; and (3)
16 marketing materials used at the point-of-sale in California subsequent to October
17 2003.

18
19 **Document Request No. 4:** Produce all DOCUMENTS constituting a
20 release of claims (or any other DOCUMENT which may relieve DEFENDANTS of
21 potential legal obligations) related to WDO services, WDO infestation or WDO
22 damage which relate to or concern the customers identified in DEFENDANTS'
23 response to Interrogatory Number 3 and produce all DOCUMENTS relating to the
24 execution of such DOCUMENTS from the customers or properties identified in
25 response to interrogatory number 3.

26 **Response to Document Request No. 4:** Defendants object to this
27 request because it is overly broad, unduly burdensome, and seeks irrelevant
28 information not reasonably calculated to lead to the discovery of admissible evidence.

1 Among other reasons, the request is improper because it seeks information about
2 individual putative class members, which is completely irrelevant prior to class
3 certification. Moreover, this request is unduly burdensome because releases are not
4 maintained in a central location but, rather, are maintained in over ten thousand
5 individual customer or claim files, requiring a file-by-file review. Subject to and
6 without waiving the foregoing and General Objections, Defendants will produce
7 manuals identified in response to Interrogatory 10 that contain exemplar releases that
8 may have been used in the course of Orkin's subterranean termite treatment business
9 in California between October 2003 and the filing of the Complaint.

10
11 **Document Request No. 5:** Produce all documents and things relating to
12 your responses to Interrogatory Number 5.

13 **Response to Document Request No. 5:** Defendants object to this
14 request because it is overly broad, unduly burdensome, and seeks irrelevant
15 information not reasonably calculated to lead to the discovery of admissible evidence.
16 In addition, it seeks documents over a twenty-year period and is not limited to
17 subterranean termites. This request is unduly burdensome because it would require, at
18 a minimum: (1) a review of each branch file for each putative class member; (2)
19 interviews with current and former branch employees; (3) discovery from each
20 putative class member; and (4) a property inspection of each property. Moreover,
21 prior to class certification, the merits of each putative class member's claim are
22 irrelevant. The purpose of the class certification inquiry under Fed. R. Civ. P. 23 is to
23 determine whether there is a common body of proof that would permit the named
24 Plaintiffs, in proving their own claims, to necessarily prove the claims of all other
25 absent class members. *See In re Rubber Chemicals*, 232 F.R.D. at 352. With few
26 exceptions, none of which is applicable here, the merits of the claims of the putative
27 class members are not relevant to the class certification inquiry. *See Eisen*, 417 U.S.
28 at 177; *see also Hanon*, 976 F.2d at 509. Defendants further object to the extent that

1 the request invades the financial privacy of Defendants' customers. Defendants
2 further object to the term "things" as vague and ambiguous, calling for speculation.

3
4 **Document Request No. 6:** Produce all DOCUMENTS relating to
5 internal audits (whether done in whole or in part by DEFENDANTS' employees,
6 agents, or subcontractors or others) of DEFENDANTS' WDO SERVICES and to
7 DEFENDANTS' policies, practices, procedures or from DOCUMENTS regarding
8 internal audits of DEFENDANTS' WDO SERVICES during the RELEVANT TIME
9 PERIOD and actions taken in response thereto including, but not limited to:
10 determining whether WDO services at structures serviced by DEFENDANTS
11 satisfied any legal requirements, including but not limited to, product label
12 requirements, California regulatory requirements, and/or DEFENDANTS' internal
13 standards or requirements; whether details of WDO services were recorded properly;
14 whether inspections were performed properly; whether graphs were drawn properly
15 and effectively; and whether and to what extent customers were informed of all
16 material facts they needed to know to make informed decisions related to the
17 protection of their properties from WDOs. IDENTIFY the RELEVANT TIME
18 PERIODS that any such policies, practices, procedures or form DOCUMENTS were
19 effective, were changed, were in use, or were available for use. This response should
20 include but not be limited to DOCUMENTS relating to the "Quality Assurance
21 Program," the "Retreatment Credit Program," Operation Zero Termites," individual
22 branch audits, individual region or district audits, and any other similar programs.

23 **Response to Document Request No. 6:** Defendants object to this
24 request because it is overly broad and calls for irrelevant information not reasonably
25 calculated to lead to the discovery of admissible evidence. Among other reasons, the
26 information sought covers over twenty years and is not limited to subterranean
27 termites. The request is also ambiguous because it is not clear what audits Plaintiffs
28 are referring to and therefore calls for speculation. To the extent the request seeks

1 documents reflecting Defendants' responses to such audits, it is not reasonably
2 calculated to lead to the discovery of admissible evidence because, under Federal Rule
3 of Evidence 407, evidence of subsequent remedial measures is inadmissible.
4 Defendants further object that the request to "identify" when certain documents were
5 effective is an improper document request.

6
7 **Document Request No. 7:** Produce all DOCUMENTS related to or
8 concerning how DEFENDANTS calculated the amounts of money to charge
9 California customers for initially placing a structure under a WDO SERVICE contract
10 and IDENTIFY the time periods that the policies, practices and procedures reflected
11 in any such DOCUMENTS were effective, in use, changed, or available for use. The
12 response to this request should include but not be limited to the provision of all "Rate
13 Cards."

14 **Response to Document Request No. 7:** Defendants object to this
15 request because it is overly broad, irrelevant, and seeks the disclosure of confidential
16 or proprietary knowledge and/or business or commercial information. Among other
17 reasons, the request is improper because it is not limited to subterranean termites and
18 purports to cover a twenty-one year period. Moreover, *how* Defendants determine
19 their prices is completely irrelevant to any claims in the Plaintiffs' Complaint, which
20 does not challenge the method by which Orkin sets its prices. As to the actual prices
21 charged to California customers (as opposed to the method for calculating such
22 prices), the request is also improper because the amount of such charges are irrelevant
23 to any issue for class certification or liability and are relevant only as to damages in
24 the event that the putative class is certified. Defendants further object that the request
25 to "identify" when certain documents were effective is an improper document request.
26 Defendants further object to this request on grounds that the phrase "things relating
27 to" is vague and ambiguous, calling for speculation. Subject to and without waiving
28 the foregoing and General Objections, Defendants will make available for inspection

1 and copying at a mutually agreeable time and place the rate cards available for use in
2 California between October 2003 and the present.

3
4 **Document Request No. 8:** Produce all product labels and all revisions
5 thereof for liquid chemical termiticides and "baiting" systems identified in response to
6 Interrogatories 8 and 9.

7 **Response to Document Request No. 8:** Defendants object to this
8 request as vague and ambiguous. The request is also overly broad and calls for
9 irrelevant information not reasonably calculated to lead to the discovery of admissible
10 evidence to the extent it covers termiticides used in states other than California, the
11 period preceding October 2003, and wood-destroying organisms other than
12 subterranean termites. Subject to and without waiving the foregoing and General
13 Objections, Defendants will make available for inspection and copying at a mutually
14 agreeable time and place labels for products used to treat subterranean termites in
15 California between October 2003 and the present.

16
17 **Document Request No. 9:** Produce all DOCUMENTS relating to the
18 factors or criteria used by DEFENDANTS to determine the product used to treat its
19 [sic] WDO customers' properties during the RELEVANT TIME PERIOD.

20 **Response to Document Request No. 9:** Defendants object to this
21 request on the ground that the phrase "factors or criteria" is vague and ambiguous,
22 calling for speculation. Defendants further object that this request is overly broad and
23 calls for irrelevant information not reasonably calculated to lead to the discovery of
24 admissible evidence. Among other reasons, the request seeks documents regarding
25 treatment of all wood-destroying organisms, and is not limited to subterranean
26 termites, nor the State of California. Subject to and without waiving the foregoing
27 and General Objections, Defendants will make available for inspection or copying at
28

1 a mutually agreeable time and place Orkin's annual product information memoranda
2 between October 2003 and April 2008.

3 **Document Request No. 10:** Produce all DOCUMENTS and things
4 relating to DEFENDANTS' treatment methods and specifications for subterranean
5 (ground) termite treatment during the RELEVANT TIME PERIOD, and IDENTIFY
6 the RELEVANT TIME PERIODS that any such treatment methods/specifications
7 were in use, were changed, or were available for use.

8 **Response to Document Request No. 10:** Defendants object to this
9 request on the ground that the phrase "methods or specifications" is vague and
10 ambiguous, calling for speculation. Defendants further object to the term "things" as
11 vague and ambiguous, calling for speculation. To the extent that the request, in
12 calling for the production of "things" is literally requesting equipment and tools used
13 by Orkin in connection with the treatment of subterranean termite jobs, it is overly
14 broad, unduly burdensome, disruptive of Orkin's business, and calls for irrelevant
15 things not reasonably calculated to lead to the discovery of admissible evidence.
16 Moreover, the request is overly broad and calls for irrelevant information because,
17 among other reasons, it seeks documents over a twenty-year period and is not limited
18 to the State of California.

19 Subject to and without waiving the foregoing and General Objections, on
20 or about May 9 and 12, 2008, Defendants produced copies of numerous documents
21 that reflect Orkin's general policies and practices regarding the treatment of
22 subterranean termites in California. (See Focus 1-3540; K-LP 1-2733; K-SA 1-274;
23 K-TB 1-268; TTEM 1-979). In addition, Orkin has produced other general policy and
24 practice documents in connection with *McCord Properties, Ltd., et al. v. Orkin*
25 *Exterminating Co., Inc.*, No. 2002-4981 (Jefferson County); *Junkin v. Orkin*
26 *Exterminating Co., Inc.*, No. CV-2001-1038 (Tuscaloosa County); *Knopf v. Orkin*
27 *Exterminating Co., Inc.*, No. CV04-2693 (Jefferson County); and *Hanson v. Orkin*
28 *Exterminating Co., Inc.*, No. CV01-06 (Tallapoosa County). Subject to Plaintiffs'

1 countersignature, pursuant to a letter agreement dated June 5, 2008 (the "Letter
2 Agreement"), Orkin has permitted Plaintiffs to use those documents in this action
3 (consistent with the terms of that Letter Agreement) and Plaintiffs have agreed that
4 Orkin need not reproduce such documents. In addition, to the extent Defendants have
5 not already done so, and to the extent that the following exist, Defendants will make
6 available for inspection and copying at a mutually agreeable time and place the Orkin:
7 (1) Termite Treatment Expectations Manual; (2) FOCUS Administrative Manual; (3)
8 General Office Procedure Manual; (4) The Orkin Professional Initial Termite Control
9 Training Manual; (5) Initial Termite Treatment Control Training Certified Field
10 Trainer Handbook; (6) Service Manager(s) Manual; (7) Branch Manager Manual; (8)
11 Region Manager Manual; (9) Sales Training Manual; (10) Service Alerts; (11)
12 Technical Bulletin; and (12) Lesson Plans. Defendants will produce the foregoing
13 documents for the period October 2003 to the present as they relate to the allegations
14 of the Complaint and to the extent not previously produced to Plaintiffs' counsel.

15
16 **Document Request No. 11:** Produce all DOCUMENTS and things
17 relating to which treatment methods/specifications identified in response to the
18 immediately previous request, were required to satisfy: (a) termiticide product label
19 requirements, (b) state regulatory requirements, and (c) DEFENDANTS' internal
20 requirements, and IDENTIFY the RELEVANT TIME PERIODS that any such unit
21 operations were used, were changed, or were available for use.

22 **Response to Document Request No. 11:** Defendants object to this
23 request because, in its entirety, it is vague and ambiguous, incomprehensible, and
24 cannot be answered as phrased. Moreover, the request is clearly a disguised
25 interrogatory and, therefore, it is an improper document request. Ultimately, given the
26 problems with the request, it is also overly broad and calls for the production of
27 irrelevant information not reasonably calculated to lead to the discovery of admissible
28 evidence. Among other reasons, it covers a twenty-year period and is not limited to

1 the State of California. Finally, to the extent not covered, Defendants incorporate by
2 reference their objections to Document Request No. 10 as if set forth fully herein.

3
4 **Document Request No. 12:** Produce all DOCUMENTS relating to
5 DEFENDANTS' policies, practices, procedures, guidelines, standards or form
6 documents used during the RELEVANT TIME PERIOD to determine how treatment
7 is actually to be performed in order to place a structure under a WDO SERVICE
8 contract or bond, including how any information is taken from field notes, an initial
9 graph or inspection report, or other document, to a job work order or other
10 DOCUMENT specifying the work to be performed at the property as described in
11 response to Interrogatory 10.

12 **Response to Document Request No. 12:** Defendants object to this
13 request because the phrases "how treatment is actually to be performed in order to
14 place a structure under a WDO SERVICE contract or bond," and "information taken
15 from field notes" are vague and ambiguous, incomprehensible, and, therefore, cannot
16 be answered as phrased. Moreover, the request is overly broad and calls for irrelevant
17 information not reasonably calculated to lead to the discovery of admissible evidence.
18 Among other reasons, all documents that merely "relate" to the actual policies and
19 procedures followed by Orkin have no bearing on Plaintiffs' claims. Moreover, the
20 request covers all wood-destroying organisms and is not limited to subterranean
21 termites, and seeks documents over a twenty-year period. Subject to and without
22 waiving the foregoing and General Objections, Defendants direct Plaintiffs to the
23 documents produced in their Responses to Document Request Nos. 2 and 10.

24
25 **Document Request No. 13:** Produce all DOCUMENTS relating to
26 DEFENDANTS' policies, practices, procedures, guidelines or standards for recording
27 treatment work done at a structure on an application record, or other document(s) used
28 to record such information as described in response to Interrogatory.

1 **Response to Document Request No. 13:** Defendants object to this
2 request in that it is incomplete in failing to identify the Interrogatory to which it refers.
3 Defendants further object to this request because it is overly broad and calls for
4 irrelevant information not reasonably calculated to lead to the discovery of admissible
5 evidence. Among other reasons, the request is not limited to subterranean termites,
6 and is not limited in time or to treatment performed in California. Subject to and
7 without waiving the foregoing and General Objections, Defendants direct Plaintiffs to
8 the documents produced in their Responses to Document Request Nos. 2 and 10.

9
10 **Document Request No. 14:** Produce all DOCUMENTS used to identify
11 treatment mechanics/specifications to be completed in performance of termite
12 treatment work to be performed at a structure, and IDENTIFY the RELEVANT TIME
13 PERIODS any such DOCUMENTS were effective, were in use, were changed, or
14 were available for use.

15 **Response to Document Request No. 14:** Defendants object to this
16 request on grounds that the phrase "treatment mechanics" is vague and ambiguous,
17 calling for speculation. Defendants further object to this request because it is overly
18 broad and calls for irrelevant information not reasonably calculated to lead to the
19 discovery of admissible evidence because, among other reasons, it covers a twenty-
20 year period, and is not limited to subterranean termites or the State of California.
21 Moreover, Defendants object that the request to "identify" when certain documents
22 were effective is an improper document request. Subject to and without waiving the
23 foregoing and General Objections, Defendants direct Plaintiffs to the documents
24 produced in their Responses to Document Request Nos. 2 and 10.

25
26 **Document Request No. 15:** Produce all DOCUMENTS and things
27 relating to DEFENDANTS' policies, practices and procedures or form documents
28 during the RELEVANT TIME PERIOD for investigations, inspections, and

1 treatment(s) performed in response to discovery of WDO infestation or damage at a
2 structure, and IDENTIFY the RELEVANT TIME PERIODS that any such policies,
3 practices and procedures were effective, were in use, were changed, or were available
4 for use.

5
6 **Response to Document Request No. 15:** Defendants object to this
7 request on grounds that the terms "investigations" and "things" are vague and
8 ambiguous, calling for speculation. Defendants further object to this request because
9 it is overly broad and calls for irrelevant information not reasonably calculated to lead
10 to the discovery of admissible evidence. Among other reasons, the information
11 sought covers more than twenty years and is not limited to subterranean termites or
12 the State of California, and seeks the production of hundreds if not thousands of tools
13 and machines that may have been used in connection with any so-called
14 "investigations." Finally, Defendants object that the request to "identify" when
15 certain documents were effective is an improper document request. Subject to and
16 without waiving the foregoing and General Objections, Defendants direct Plaintiffs to
17 the documents produced in their Responses to Document Request Nos. 2 and 10.

18
19 **Document Request No. 16:** Produce all DOCUMENTS and things
20 relating to DEFENDANTS' training during the RELEVANT TIME PERIOD of all
21 technicians or other personnel relating to performance of treatment or "bait"
22 installation at structures for all purposes involved in providing WDO SERVICES to
23 prospective, new or existing customers, including but not limited to any internal
24 categorization of treatments (for example pretreatment, initial treatment, post-
25 construction treatment, spot treatment, remedial treatment, the "Retreatment Credit
26 Program," or other), and IDENTIFY the RELEVANT TIME PERIODS that any such
27 training was used, was effective, was changed, or was available for use.

1 **Response to Document Request No. 16:** Defendants object to this
2 request on grounds that the phrase “internally categorized” is vague and ambiguous,
3 calling for speculation. Defendants further object to this request because it is overly
4 broad and calls for irrelevant information not reasonably calculated to lead to the
5 discovery of admissible evidence. Among other reasons, the information sought
6 covers more than twenty years and is not limited to subterranean termites. Finally,
7 Defendants object that the request to “identify” when certain documents were
8 effective is an improper document request. Subject to and without waiving the
9 foregoing and General Objections, Defendants direct Plaintiffs to the documents
10 produced in their Responses to Document Request Nos. 2 and 10.

11
12 **Document Request No. 17:** Produce all DOCUMENTS relating to
13 DEFENDANTS’ policies, practices, procedures, guidelines, standards or form
14 documents used or available for use during the RELEVANT TIME PERIOD in
15 tracking purchase of termiticide chemicals and “bait” stations, systems, or station
16 inserts used at structures under a WDO SERVICE bond or contract, and IDENTIFY
17 the RELEVANT TIME PERIODS that any such policies, practices, procedures,
18 guidelines, standards or form documents were effective, were in use, were changed, or
19 were available for use.

20 **Response to Document Request No. 17:** Defendants object to this
21 request because it is overly broad and calls for irrelevant information not reasonably
22 calculated to lead to the discovery of admissible evidence. Among other reasons, the
23 information sought covers over twenty years and is not limited to subterranean
24 termites. Moreover, documents regarding aggregate purchases, without any limitation
25 to a geographic location consistent with Plaintiffs’ Complaint, are irrelevant.
26 Defendants state that the only documentation available is the customer files, which
27 contain the type and amount of chemical applied that was generated from the tank by
28 flometer. Accordingly, this request is unduly burdensome in that it requires a file-by-

1 file review of customer files. Moreover, Defendants object on the ground that the
2 request to "identify" when certain documents were effective is an improper document
3 request.

4
5 **Document Request No. 18:** Produce all DOCUMENTS relating to
6 DEFENDANTS' policies, practices, procedures, guidelines, standards or form
7 DOCUMENTS used or available for use during the RELEVANT TIME PERIOD in
8 tracking the use of termiticide chemicals and "bait" stations, systems, or station inserts
9 at structures (including but not limited to identification of the product, the amount and
10 concentration used, where the product was applied, and the rate at which it was
11 applied), and IDENTIFY the RELEVANT TIME PERIODS that any such policies,
12 practices, procedures, guidelines, standards or form documents were effective, were in
13 use, were changed, or were available for use.

14 **Response to Document Request No. 18:** Defendants incorporate by
15 reference herein their Response to Document Request No. 17.

16
17 **Document Request No. 19:** Produce all DOCUMENTS and things
18 relating to DEFENDANTS' policies, practices, procedures, guidelines, standards or
19 form documents used during the RELEVANT TIME PERIOD in controlling its
20 inventory of termiticide chemicals and "bait" stations, systems, or station inserts,
21 including but not limited to: determining which of these products to purchase and how
22 much; how these products are checked out for use at a structure, how products
23 checked out but not used at a structure are checked back in, how it is determined
24 whether the proper amount of product was used, and whether the proper amount of
25 product was returned, and IDENTIFY the RELEVANT TIME PERIODS that any
26 such policies, practices, procedures, guidelines, standards or form documents were
27 effective, were in use, were changed, or were available for use.

1 **Response to Document Request No. 19:** Defendants object that the
2 phrase "controlling inventory" and "things" (as used in the context of this document
3 request) is vague, calling for speculation. Defendants further object to this request
4 because it is overly broad and calls for irrelevant information not reasonably
5 calculated to lead to the discovery of admissible evidence. Among other reasons, the
6 information sought covers more than twenty years and is not limited to subterranean
7 termites, and documents regarding aggregate purchases, without any limitation to a
8 geographic location consistent with Plaintiffs' Complaint, are irrelevant. Moreover,
9 Defendants object on the ground that the request to "identify" when certain documents
10 were effective is an improper document request.

11 **Document Request No. 20:** Produce all DOCUMENTS and things
12 relating to DEFENDANTS' policies, practices and procedures for acquiring a waiver
13 from its customers of termite treatment standards originated from any source,
14 including but not limited to product label directions, regulatory requirements, or
15 DEFENDANTS' own company standards, and any form waivers as described in
16 response to Interrogatory 12.

17 **Response to Document Request No. 20:** Defendants object because the
18 phrase "a waiver from its customers" is vague and ambiguous, calling for speculation.
19 Defendants also object on the grounds of relevance because, among other reasons, no
20 claims or issues regarding "waivers" are identified in the Plaintiffs' Complaint.
21 Defendants further object to the term "things"(in the context of this document request)
22 as vague and ambiguous, calling for speculation. Defendants further object to the
23 request to "identify," as an improper document request. Subject to and without
24 waiving the foregoing and General Objections, Defendants agree to produce the
25 documents identified in their Responses to Document Request Nos. 2 and 10.

26
27 **Document Request No. 21:** Produce all DOCUMENT and things
28 relating to DEFENDANTS' policies, practices and procedures during the

1 RELEVANT TIME PERIOD for determining whether or not to re-apply termiticides
2 or service "bait" systems at structures under WDO SERVICE contracts issued by
3 DEFENDANTS, and under such contracts acquired, initiated or otherwise obtained by
4 DEFENDANTS, and IDENTIFY the RELEVANT TIME PERIODS that any such
5 policies, practices and procedures were effective, were in use, were changed, or were
6 available for use.

7 **Response to Document Request No. 21:** Defendants object to this
8 request because it is overly broad and calls for irrelevant information not reasonably
9 calculated to lead to the discovery of admissible evidence. Among other reasons, (1)
10 the information sought covers more than twenty years and is not limited to
11 subterranean termites, and (2) covers contracts acquired by Orkin, which could not be
12 included in the putative class. Defendants further object to the term "things" (in the
13 context of this document request) as vague and ambiguous, calling for speculation.
14 Moreover, Defendants further object that the request to "identify" when certain
15 documents were effective is an improper document request. Subject to and without
16 waiving the foregoing and General Objections, Defendants direct Plaintiffs to the
17 documents produced in their Responses to Document Request Nos. 2 and 10.

18
19 **Document Request No. 22:** Produce all DOCUMENTS (including but
20 not limited to memoranda, data, research, cost-benefit analyses, surveys, studies,
21 reports, etc.) relating to decisions made by or reviewed by any officer, director, or
22 corporate department head of either DEFENDANT related to or concerning whether
23 DEFENDANTS would chemically treat, chemically retreat, or service "bait" systems
24 at properties of customers found to have or suspected of having an improper initial
25 treatment or "bait" WDO SERVICES according to any standards (approved label,
26 regulations, company policy or other).

27 **Response to Document Request No. 22:** Defendants object to this
28 request because the phrases "improper initial treatment" and "'bait' WDO SERVICES

1 according to any standards” are vague and ambiguous, calling for speculation. The
2 request is also overly broad and calls for irrelevant information not reasonably
3 calculated to lead to the discovery of admissible evidence. Among other reasons, the
4 request is not limited to subterranean termites, or the relevant class period. More
5 generally, the request as a whole is so vague and overly broad that it does not fairly
6 apprise Defendants of the particular documents sought.

7
8 **Document Request No. 23:** Produce all DOCUMENTS and things
9 relating to DEFENDANTS’ policies, practices and procedures during the
10 RELEVANT TIME PERIOD relating to performing inspections at structures for all
11 purposes involved in provision of WDO SERVICES to prospective, new or existing
12 customers, including but not limited to any internal categorization of inspections (for
13 example sales inspection, initial inspection, annual renewal inspection, inspection for
14 suspected infestation or damage, quality audit inspections by branch managers, or
15 other), and IDENTIFY the RELEVANT TIME PERIODS that any such policies,
16 practices and procedures were effective, were in use, were changed, or were available
17 for use.

18 **Response to Document Request No. 23:** Defendants object to this
19 request because it is overly broad and calls for irrelevant information not reasonably
20 calculated to lead to the discovery of admissible evidence. Among other reasons, the
21 information sought covers more than twenty years and is not limited to subterranean
22 termites. Defendants further object to the terms “things” (in the context of this
23 document request) and “internal categorizations” as vague and ambiguous, calling for
24 speculation. Moreover, Defendants further object that the request to “identify” when
25 certain documents were effective is an improper document request. Subject to and
26 without waiving the foregoing and General Objections, Defendants direct Plaintiffs to
27 the documents produced in their Responses to Document Request Nos. 2 and 10.

1 **Document Request No. 24:** Produce all DOCUMENTS and things
2 relating to DEFENDANTS' training during the RELEVANT TIME PERIOD of all
3 technicians or other personnel regarding performance of inspections at structures for
4 all purposes involved in providing WDO SERVICES to prospective, new or existing
5 customers, including but not limited to any internal categorization of inspections (for
6 example sales inspection, initial inspection, annual renewal inspection, inspection for
7 suspected infestation or damage, quality audit inspections by branch managers, or
8 other), and IDENTIFY the RELEVANT TIME PERIODS that any training was used,
9 was effective, was changed, or was available for use.

10 **Response to Document Request No. 24:** Defendants object to this
11 request because it is overly broad and calls for irrelevant information not reasonably
12 calculated to lead to the discovery of admissible evidence. Among other reasons, the
13 information sought covers more than twenty years and is not limited to subterranean
14 termites. Defendants further object to the term "things" (in the context of this
15 document request) as vague and ambiguous, calling for speculation. Moreover,
16 Defendants further object that the request to "identify" when certain documents were
17 effective is an improper document request. Subject to and without waiving the
18 foregoing and General Objections, Defendants direct Plaintiffs to the documents
19 produced in their Response to Document Request No. 2, and agree to produce any
20 additional training manuals used in California since 2003 for the treatment of
21 subterranean termites.

22
23 **Document Request No. 25:** Produce all DOCUMENTS relating to
24 DEFENDANTS' policies, practices, procedures and form documents regarding
25 internal use of information collected at inspections at structures for all purposes
26 involved in provision of WDO SERVICES to prospective, new or existing customers,
27 including but not limited to any internal categorization of inspections (for example
28 sales inspection, initial inspection, annual renewal inspection, inspection for suspected

1 infestation or damage, quality audit inspections by branch managers, or other), and
2 relating to disclosure of any such information to customers as described in response to
3 Interrogatory 13.

4 **Response to Document Request No. 25:** Defendants object to this
5 request because the phrases "information collected at inspections," "internal use of
6 information," and "internal categorization" are vague and ambiguous, calling for
7 speculation. Defendants also object on the ground that the request is inconsistent to
8 the extent that it requests "internal" information that was disclosed to customers. The
9 request is also overly broad and calls for irrelevant information not reasonably
10 calculated to lead to the discovery of admissible evidence because, among other
11 reasons, it is not limited to subterranean termites, or the relevant putative class period.
12 Subject to and without waiving the foregoing and General Objections, Defendants
13 refer Plaintiffs to the documents produced in their Responses to Document Request
14 Nos. 2 and 10, and Defendants will also make available for inspection and copying at
15 a mutually agreeable time and place exemplar inspection report forms used in
16 California since October 2003.

17 **Document Request No. 26:** Produce all DOCUMENTS and things
18 relating to all of DEFENDANTS' policies, practices and procedures during the
19 RELEVANT TIME PERIOD regarding sales of contracts for the performance of
20 WDO SERVICES, including but not limited to advertising, leads, inspection services,
21 treatment services, and other services necessary to protect the properties of
22 DEFENDANTS' customers from attack by WDOs, including termites, and
23 IDENTIFY the RELEVANT TIME PERIODS that any such policies, practices and
24 procedures were effective, were in use, were changed, or were available for use.

25 **Response to Document Request No. 26:** Defendants object to this
26 request because it is so overly broad and vague that it is incomprehensible and does
27 not reasonably limit or identify the types of documents it seeks. The request is also
28 overly broad and calls for irrelevant information not reasonably calculated to lead to

1 the discovery of admissible evidence because, among other reasons, the information
2 sought covers more than twenty years and is not limited to subterranean termites.
3 Defendants further object to the term "things" (in the context of this document
4 request) as vague and ambiguous, calling for speculation. Moreover, Defendants
5 further object that the request to "identify" when certain documents were effective is
6 an improper document request. Subject to and without waiving the foregoing and
7 General Objections, Defendants direct Plaintiffs to the policies reflected in the
8 documents being produced pursuant to Document Request Nos. 2 and 10. In addition,
9 Defendants will make available for inspection or copying at a mutually agreeable time
10 and place (1) form contracts used in California since October 2003 for the treatment of
11 subterranean termites; and (2) sales brochures used in California since October 2003
12 for subterranean termites.

13
14 **Document Request No. 27:** Produce all form DOCUMENTS used, or
15 available for use during the RELEVANT TIME PERIOD by DEFENDANTS during
16 the sales process for issuance of WDO SERVICE contracts including but not limited
17 to all advertising materials and IDENTIFY the RELEVANT TIME PERIODS during
18 which such form DOCUMENTS were in use, were changed, were effective, or were
19 available for use.

20 **Response to Document Request No. 27:** Defendants object to this
21 request because it is overly broad and calls for irrelevant information not reasonably
22 calculated to lead to the discovery of admissible evidence. Among other reasons: (1)
23 this request seeks information about advertisements that Plaintiffs testified on May 20
24 and 22, 2008 that they never saw or heard; therefore, they have no standing to assert
25 claims based on such advertisements; and (2) it seeks documents over a twenty year-
26 period and is not limited to the sales of treatment for subterranean termites. Subject to
27 and without waiving the foregoing and General Objections, Defendants will make
28 available for inspection and copying sales brochures for subterranean termite

1 treatments, including monitoring and baiting, that were used in California between
2 October 2003 and the present.

3
4 **Document Request No. 28:** Produce all DOCUMENTS and things
5 relating to DEFENDANTS' factors or criteria used during the RELEVANT TIME
6 PERIOD to determine whether or not it would place a property under a WDO
7 SERVICE contract, and IDENTIFY the RELEVANT TIME PERIODS that any such
8 factors or criteria were effective, were in use, were changed, or were available for use.

9 **Response to Document Request No. 28:** Defendants object to this
10 request because it is overly broad and irrelevant to the extent it seeks the production of
11 "things." Defendants further object to the terms "things" and "factors" (in the context
12 of this document request) as vague and ambiguous, calling for speculation. Moreover,
13 Defendants object that the request to "identify" when certain documents were
14 effective is an improper document request. Defendants object to this request because
15 the phrase "things relating to DEFENDANTS' factors or criteria," is vague and
16 ambiguous, calling for speculation. Subject to and without waiving the foregoing and
17 General Objections, Defendants agree to produce the guarantee matrices found in
18 Defendants' manuals available for use in California subsequent to October 2003.

19 **Document Request No. 29:** Produce all DOCUMENTS related to or
20 concerning the advertising campaigns described in response to Interrogatory 14.

21 **Response to Document Request No. 29:** Defendants object to this
22 request for the reasons stated in response to Interrogatory No. 14 and Document
23 Request No. 27, which are incorporated herein by reference.

24
25 **Document Request No. 30:** Produce all DOCUMENTS and things
26 relating to DEFENDANTS' policies, practices, procedures, guidelines, standards or
27 form documents during the RELEVANT TIME PERIOD regarding determination of
28 charges or fees to customers for WDO SERVICES performed after the initial

1 placement of the structure under contract, and IDENTIFY the RELEVANT TIME
2 PERIODS that any such policies, practices, procedures, guidelines, standards, or form
3 documents were effective, were in use, were changed, or were available for use.

4 **Response to Document Request No. 30:** Defendants object to this
5 request because it is overly broad, irrelevant, and seeks the disclosure of confidential
6 or proprietary knowledge and/or business or commercial information. In particular,
7 how Defendants determine their prices is completely irrelevant to any claims in the
8 Plaintiffs' Complaint and is irrelevant to any issue for class certification or liability.
9 Moreover, the request seeks documents over a twenty year-period and is not limited to
10 the sales of treatment for subterranean termites. Defendants further object that the
11 request to "identify" when certain documents were effective is an improper document
12 request. Defendants further object to this request on grounds that the phrase "things
13 relating to" is vague and ambiguous, calling for speculation. Subject to and without
14 waiving the foregoing and General Objections, Defendants agree to produce the rate
15 cards available for use in California subsequent to October 2003, subject to a
16 protective order and confidentiality agreement.

17
18 **Document Request No. 31:** Produce all DOCUMENTS and things
19 relating to DEFENDANTS' policies, practices, procedures, training, guidelines, and
20 standards during the RELEVANT TIME PERIOD for taking its customers through the
21 process of selling them a WDO SERVICE contract, including but not limited to oral
22 representations and sales presentations, issuance of the bond (or contract) and
23 performance of the initial services, and IDENTIFY the RELEVANT TIME PERIODS
24 that any such policies, practices, procedures, guidelines or standards were effective,
25 were in use, were changed, or were available for use.

26 **Response to Document Request No. 31:** Defendants object to this
27 request because the terms and phrases "things relating to," "the process of selling,"
28 and "bond" are vague and ambiguous, calling for speculation. The request is also

1 overly broad and seeks the production of irrelevant documentation because, among
2 other reasons, it seeks documents over a twenty year-period and is not limited to the
3 sales of treatment for subterranean termites. Moreover, Defendants object that the
4 request to "identify" when certain documents were effective is an improper document
5 request. Subject to and without waiving the foregoing and General Objections, and in
6 addition to the documents identified in Document Requests Nos. 2 and 10, Defendants
7 will make available for inspection and copying at a mutually agreeable time and place
8 the following documents, to the extent that they were used in California since October
9 2003 in connection with the sale of a subterranean termite job: (1) guarantee matrices;
10 (2) rate cards; (3) form contracts; (4) sales brochures.

11
12 **Document Request No. 32:** Produce all DOCUMENTS and things
13 relating to all factors or criteria considered by DEFENDANTS during the
14 RELEVANT TIME PERIOD in determining whether a structure qualifies or does not
15 qualify to be placed under a repair bond or contract for WDO SERVICES, and
16 IDENTIFY the RELEVANT TIME PERIODS that any such policies, practices,
17 procedures, guidelines or standards were effective, were in use, were changed, or were
18 available for use.

19 **Response to Document Request No. 32:** Defendants object to this
20 request because the phrase "things relating to all factors or criteria," and the terms
21 "bond" and "things" (in the context of this document request) are vague and
22 ambiguous, calling for speculation. Defendants further object because the request is
23 overly broad and seeks irrelevant documentation because, among other reasons, it
24 seeks documents over a twenty year-period and is not limited to the sales of treatment
25 for subterranean termites. Moreover, Defendants object that the request to "identify"
26 when certain documents were effective is an improper document request. Subject to
27 and without waiving the foregoing and General Objections, Defendants will make
28 available for inspection and copying at a mutually agreeable time and place guarantee

1 matrices that have been used in California since October 2003 in connection with the
2 sale of subterranean termite jobs.

3
4 **Document Request No. 33.** Produce all DOCUMENTS and things
5 relating to all factors or criteria considered by DEFENDANTS during the
6 RELEVANT TIME PERIOD in determining whether a structure qualifies or does not
7 qualify to be placed under a retreatment bond or contract for WDO SERVICES, and
8 IDENTIFY the RELEVANT TIME PERIODS that any such policies, practices,
9 procedures, guidelines or standards were effective, were in use, were changed, or were
10 available for use.

11 **Response to Document Request No. 33:** This request is substantially
12 identical to Document Request No. 32 (repair v. re-treatment guarantees). Defendants
13 therefore incorporate by reference their objections to Document Request No. 32 as if
14 set forth fully herein.

15
16 **Document Request No. 34:** Produce all DOCUMENTS and things
17 relating to DEFENDANTS' policies, practices and procedures during the
18 RELEVANT TIME PERIOD for determining the WDO SERVICE contracts,
19 including the reasons for issuance of limited duration contracts as opposed to lifetime
20 protection contracts, and IDENTIFY the RELEVANT TIME PERIODS that any such
21 policies, practices and procedures were effective, were in use, were changed, or were
22 available for use.

23 **Response to Document Request No. 34:** Defendants object to this
24 request because the phrase "things relating to," and the term "things" (in the context
25 of this document request) are vague and ambiguous, calling for speculation.
26 Defendants further object because the request is overly broad and seeks irrelevant
27 documentation because, among other reasons, it seeks documents over a twenty year-
28 period and is not limited to the sales of treatment for subterranean termites.

1
2 **Document Request No. 35:** Produce all DOCUMENTS relating to
3 DEFENDANTS' acquisition, during the RELEVANT TIME PERIOD, of the WDO
4 SERVICE contracts of any member of the Class as identified in the complaint from
5 any person or entity, whether DEFENDANTS' provision of services under any such
6 contracts or issuance of new contracts to such customers is characterized as a purchase
7 or acquisition of their contracts, as a pick-up of any such contracts or services, or
8 other characterization effectively resulting in DEFENDANTS' taking over provision
9 of WDO SERVICES for any such customers.

10 **Response to Document Request No. 35:** Defendants object to this
11 request because it is overly broad and calls for the production of irrelevant documents
12 not reasonably calculated to lead to the discovery of admissible evidence. Among
13 other reasons, the request is improper because (1) any customers Orkin acquired from
14 another company would not be proper members of the class (and, even if they were,
15 their identities are completely irrelevant prior to class certification); and (2) it covers
16 more than a twenty year-period and is not limited to the sales of treatment for
17 subterranean termites. Defendants further object that the request is unduly
18 burdensome to the extent that it requires a contract-by-contract review.

19
20 **Document Request No. 36:** Produce all DOCUMENTS and things
21 relating to policies, practices and procedures during the RELEVANT TIME PERIOD
22 for provision of WDO SERVICES to properties whose WDO SERVICE contracts
23 were acquired or otherwise received from any other entity or person.

24 **Response to Document Request No. 36:** Defendants incorporate by
25 reference their objections to Document Request No. 35 as if set forth fully herein. In
26 addition, Defendants object to this request because the phrase "things relating to" is
27 vague and ambiguous, calling for speculation.

1 **Document Request No. 37:** Produce all purchase or acquisition
2 agreements including, but not limited to, all attachments or exhibits or references
3 related thereto of the WDO SERVICE companies and other structural pest control
4 operators who previously serviced the relevant Class members identified in response
5 to item 76 (including but not limited to purchases or acquisition of DEFENDANTS'
6 licensees or franchisees) entered into by DEFENDANTS.

7 **Response to Document Request No. 37:** Defendants incorporate by
8 reference their objections to Document Request Nos. 35 as if set forth fully herein.
9 (Defendants assume that reference to "Item 76" is meant to be document request 36; if
10 that assumption is incorrect, the request is vague and calls for speculation).

11
12 **Document Request No. 38:** Produce all DOCUMENTS relating to any
13 investigations and methods to provide relief as described in response to Interrogatories
14 15 and 16.

15 **Response to Document Request No. 38:** Defendants incorporate their
16 responses and objections to Plaintiffs' Interrogatory Nos. 15 and 16 as if set forth fully
17 herein.

18
19 **Document Request 39:** Produce all DOCUMENTS relating to
20 settlements, consent decrees or plea agreements DEFENDANTS have reached with
21 state Departments of Agriculture, regulatory agencies or any Federal agency,
22 department, commission, etc. during the RELEVANT TIME PERIOD.

23 **Response to Document Request No. 39:** Defendants incorporate their
24 responses and objections to Plaintiffs' Interrogatory Nos. 15 and 16 as if set forth fully
25 herein.

26
27 **Document Request No. 40:** Produce all DOCUMENTS relating to
28 DEFENDANTS policies, practices, procedures, guidelines or form documents during

1 the RELEVANT TIME PERIOD for compliance with any settlements, consent
2 decrees or plea agreements DEFENDANTS have reached with state Departments of
3 Agriculture, regulatory agencies or any Federal agency, department, commission, etc.

4 **Response to Document Request No. 40:** Defendants incorporate their
5 responses and objections to Plaintiffs' Interrogatory Nos. 15 and 16 as if set forth fully
6 herein.

7
8 **Document Request No. 41:** Produce all monthly reports of pesticide use
9 for each relevant California county which corresponds with the month that each
10 property identified in response to Interrogatory 1 was initially serviced by
11 DEFENDANTS or when service of the property was begun by DEFENDANTS.

12 **Response to Document Request No. 41:** Defendants object to this
13 request on grounds that it is overly broad, as well as vague and ambiguous as to what
14 reports are sought. Defendants further object that the call for reports of pesticide use
15 in each California county is irrelevant to the extent it takes into account pesticides not
16 produced by Defendants. Defendants further object that the request is unduly
17 burdensome to the extent that it requires a file-by-file review of customer or employee
18 records, especially those maintained solely at the branch level. Defendants
19 incorporate their Response to Plaintiffs' Interrogatory No. 1 by reference herein.

20
21 **Document Request No. 42:** Produce all reports required under
22 California Bus. & Prof. Code sections 8516 and 8518 and Regulation 1993 which
23 correspond to each property identified in response to Interrogatory 1. The response
24 should also include but not be limited to each triennial inspection report required
25 under section 8516 (h)(3).

26 **Response to Document Request No. 42:** Defendants incorporate their
27 Response to Plaintiffs' Document Request No. 41 by reference herein.

28

1 **Document Request No. 43:** Produce all job logs as required under Calif.
2 Bus. & Prof. Code section 8516(h) and Regulation 1970(b) which correspond to each
3 property identified in response to Interrogatory 1.

4 **Response to Document Request No. 43:** Defendants incorporate their
5 Response to Plaintiffs' Document Request No. 41 by reference herein.

6
7 **Document Request No. 44.** Produce all certifications issued under
8 Calif. Bus. & Prof. Code section 8519 which correspond to each applicable property
9 identified in response to Interrogatory 1.

10 **Response to Document Request No. 44:** Defendants incorporate their
11 Response to Plaintiffs' Document Request No. 41 by reference herein.

12
13 **Document Request No. 45:** Produce all DOCUMENTS relating to
14 DEFENDANTS' policies, practices, and procedures during the RELEVANT TIME
15 PERIOD for assuring that each of its licensed employees and agents "is qualified in
16 the use and understanding of...the theory and practice of [the business of a Brach 3
17 operator/licensee (WDO SERVICES)]" pursuant to Calif. Bus. & Prof. Code section
18 8565.

19
20 **Response to Document Request No. 45:** Defendants object to this
21 request because it is overly broad and seeks irrelevant documents not reasonably
22 calculated to lead to the discovery of admissible evidence because, among other
23 reasons, it seeks documents over a twenty year-period and is not limited to
24 subterranean termites.

25
26 **Document Request No. 46:** Produce all DOCUMENTS relating to
27 DEFENDANTS' policies, practices, and procedures during the RELEVANT TIME
28 PERIOD for assuring its license employees and agents demonstrate to the California

1 Structural Pest Control Board the proper understanding of the topics listed at Calif.
2 Bus. & Prof. Code 8565.5(c).

3 **Response to Document Request No. 46:** Defendants object because the
4 request is overly broad and seeks irrelevant documents not reasonably calculated to
5 lead to the discovery of admissible evidence because, among other reasons, it seeks
6 documents over a twenty year-period and is not limited to subterranean termites.

7
8 **Document Request No. 47:** Produce all DOCUMENTS relating to the
9 response to Interrogatory 18.

10 **Response to Document Request No. 47:** Defendants object to this
11 request because it is overly broad and calls for irrelevant information not reasonably
12 calculated to lead to the discovery of admissible evidence. Among other reasons, this
13 request seeks information about advertisements that Plaintiffs testified on May 20 and
14 22, 2008 that they never saw or heard; therefore, they have no standing to assert
15 claims based on such advertisements.

16
17 **Document Request No. 48:** Produce all DOCUMENTS relating to your
18 responses to Interrogatories 19 and 20.

19 **Response to Document Request No. 48:** Subject to and without
20 waiving the General Objections and their objections to Interrogatory Nos. 19 and 20,
21 which are incorporated herein by reference, Defendants will produce documents
22 identified in their Responses to Plaintiffs' Interrogatory Nos. 19 and 20. Defendants
23 object to producing any documents "relating to [their] responses" as such a request is
24 vague, overly broad, and calls for irrelevant information not reasonably calculated to
25 lead to the discovery of admissible evidence.

1 Date: June 6, 2008
2
3
4

CALL, JENSEN & FERRELL
Mark L. Eisenhut
Matthew R. Orr

By:



Matthew R. Orr

*Attorneys for Defendants Orkin
Exterminating Company, Inc., n/k/a/ Orkin,
Inc., and Rollins, Inc.*

CERTIFICATE OF SERVICE
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On June 6, 2008, I have served the foregoing document described as **DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND DOCUMENTS REQUESTS** on the following person(s) in the manner(s) indicated below:

SEE ATTACHED SERVICE LIST

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☐ (BY MAIL) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☒ (BY OVERNIGHT SERVICE) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by the overnight service provider the same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by the overnight service provider with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by the overnight service provider at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

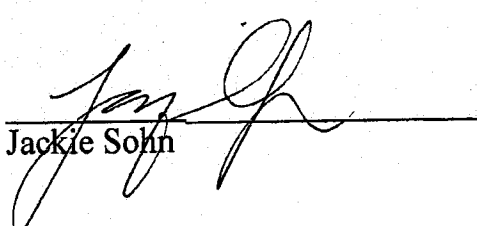
☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY E-MAIL) I transmitted the foregoing document(s) by e-mail to the addressee(s) at the e-mail address(s) indicated.

1 [] (FEDERAL) I declare that I am a member of the Bar and a registered Filing User
2 for this District of the United States District Court.

3 [X] (FEDERAL) I declare that I am employed in the office of a member of the Bar
4 of this Court at whose direction the service was made.

5 I declare under penalty of perjury under the laws of the United States of America
6 that the foregoing is true and correct, and that this Certificate is executed on June 6,
7 2008, at Newport Beach, California.

8 
9 Jackie Sohn
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SERVICE LIST

H. Tim Hoffman, Esq.
Arthur W. Lazear, Esq.
Morgan M. Mack, Esq.
Hoffman & Lazear
180 Grand Avenue, Suite 1550
Oakland, CA 94612
T: (510) 763-5700
F: (510) 835-1311

Attorneys for Plaintiffs

(By US Mail only)

Christian Hartley, Esq.
Daniel M. Bradley, Esq.
Richardson, Patrick, Westbrook &
Brickman, LLC
174 E. Bay Street
Charleston, SC 29401
T: (843) 727-6564

Attorneys for Plaintiffs

Thomas F. Campbell, Esq.
Campbell Law, P.C.
100 Concourse Parkway, Suite 115
Birmingham, AL 35244
T: (205) 278-6650

Attorneys for Plaintiffs

Douglas B. Brown, Esq.
Daniel Gerber, Esq.
Rumberger, Kirk & Caldwell, P.A.
Lincoln Plaza, Suite 1400
300 South Orange Ave.
Orlando, FL 32802-1873
T: (407) 872-7300
F: (407) 841-2133

Attorneys for Defendants

(By US Mail only)

Michael W. Davis, Esq.
Theodore R. Scarborough, Esq.
Kara L. McCall, Esq.
SIDLEY AUSTIN LLP
1 S. Dearborn Street
Chicago, IL 60603
Tel.: (312) 853-7000
Fax: (312) 853-7036

Attorneys for Defendants

(By US Mail only)

EXHIBIT B

EXHIBIT B



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

tsccarborough@sidley.com
(312) 853-2236

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TOKYO
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FOUNDED 1888

July 18, 2008

By Email and Post

Tom Campbell
D. Keiron McGowin
Campbell Law, P.C.
100 Concourse Parkway, Ste 115
Birmingham, AL 35244
tcampbell@campbelllitigation.com
kmcgowin@campbelllitigation.com

Daniel M. Bradley
Richardson Patrick Westbrook & Brickman
174 E. Bay Street
Charleston, SC 29401
dbradley@rpwb.com

Re: *Krzyzanowsky v. Orkin, Inc.*
Sheppard v. Orkin, Inc.

Dear Counsel:

We are writing to memorialize Orkin's position on the discovery issues raised in our several meet and confer sessions held in person in Atlanta (June 20) and by telephone (June 25 and 30) in connection with the above-referenced litigation. In this letter, we identify the documents and information that Orkin originally agreed to produce (Section I), and the additional documents and information Orkin would be willing to produce based on our discussions during the meet and confer process (Section II). We also address the document production regarding the named plaintiffs' property (Section III), and the documents and information on which the parties have been unable to reach an agreement (Section IV).



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I. Documents and Information Orkin Already Agreed to Produce In Its Written Responses Served on June 6, 2008.

As we provided in our written discovery responses and as we discussed at the meet and confer sessions, Orkin has agreed to produce the following documents, to the extent that they exist:

- Complete customer files for named plaintiffs (Doc. Req. 1), including:
 - Contract(s) and Guarantee(s)
 - RAC document(s)
 - Authorization to begin work
 - Graph(s) (Inspection/Treating Report)
 - Customer information sheet(s)
 - Monitoring report(s)
 - Notice(s) of work completed
 - Building profile(s)
 - Customer service record(s)
 - Reinspection report(s)
 - Treatment and retreatment report(s)
 - WDO report(s)
- Identification of name, active ingredients, and manufacturers, as well as labels for subterranean termiticides and baiting systems used at residential properties in California and Arkansas (termiticides only) during the time period of October 2003 to June 2008 (Interr. 8, 9; Doc. Req. 8).
- Policy, procedure, and training manuals (Interr. 10-13, 17; Doc. Req. 2, 4, 10-16, 20, 21, 23-26, 31), including the following:
 - Termite Treatment Expectations Manual, including revisions between October 2003 and June 2008.
 - Focus Administrative Manual, including the following sections:
 - (1) System and Administrative Overview; (2) Duties: Admin., Pest Control, Termite, Customer Service, Route Scheduler, New Customer Specialist; (3) Leads; (4) Sales; (5) Service; (6) Deposits; (7) Billing and Collections; (8) Cancellations; (9) Customer Maintenance; (10) RAC;



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(11) National Accounts; (12) Customer Service; (13) Claims; and (14) Operations and Management Reporting. We have also agreed to produce revisions made to the Focus Administration Manual between October 2003 and June 2008.

- General Office Procedure Manual (October 2003 to June 2008)
- Orkin Professional Initial Termite Control Training Manual (October 2003 to June 2008)
- Initial Termite Treatment Control Training Certified Field Trainer Handbook (October 2003 to June 2008)
- Service Manager(s) Manual (October 2003 to June 2008)
- Branch Manager Manual (October 2003 to June 2008)
- Region Manager Manual (October 2003 to June 2008)
- Sales Training Manual (October 2003 to June 2008)
- Service Alerts (October 2003 to June 2008)
- Technical Bulletins (October 2003 to June 2008)
- Lesson Plans (October 2003 to June 2008)
- Exemplars of form residential subterranean termite contracts used in California and Arkansas between October 2003 and June 2008 (Doc. Req. 3, 26, 31).
- Rate cards used for pricing residential subterranean termite jobs in California and Arkansas between October 2003 and June 2008 (Doc. Req. 7, 30, 31).
- Sales brochures used in California and Arkansas between October 2003 and June 2008 for residential subterranean termite services (Interr. 14; Doc. Req. 3, 26, 27, 29, 31).



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- Guarantee matrices found in manuals available for use in California and Arkansas between October 2003 and June 2008 (Doc. Req. 28, 31, 32, 33).
- Annual Financial Reports for Rollins, Inc. (Form 10-K) for 2003 through 2007 (Interr. 7).
- Core criteria regarding compensation programs (by job type, not for individual employees) for termite inspectors, termite service managers, and branch managers between October 2003 and June 2008 (Interr. 19, 20, Doc. Req. 48).
- Additional manuals (to the extent not already identified above) containing exemplar releases that may have been used in the course of Orkin's residential subterranean termite treatment business in California and Arkansas between October 2003 and June 2008 (Interr. 3; Doc. Req. 4).
- Exemplar inspection report forms (to the extent not already identified above) that may have been used in the course of Orkin's residential subterranean termite treatment business in California and Arkansas between October 2003 and June 2008 (Doc. Req. 25).
- Information related to acquisitions of termite and pest control companies in California and Arkansas between October 2003 and June 2008 (Interr. 21).
- Annual relevant product information memoranda dated between October 2003 and June 2008 (Doc. Req. 9).
- Subject to the terms of the June 5, 2008 Letter Agreement, Orkin has agreed to permit plaintiffs to use documents produced in connection with *McCord Properties, Ltd., et al. v. Orkin Exterminating Co., Inc.*, No. 2002-4981 (Jefferson County); *Junkin v. Orkin Exterminating Co., Inc.*, No. CV-2001-1038 (Tuscaloosa County); *Knopf v. Orkin Exterminating Co., Inc.*, No. CV04-2693 (Jefferson County); and *Hanson v. Orkin Exterminating Co., Inc.*, No. CV01-06 (Tallapoosa County).



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II. Documents and Information Orkin Would Agree to Produce Based on Further Consideration After the Meet and Confer Process.

Based on our discussions at the meet and confer sessions and further consideration with our client, Orkin also agrees to produce additional documents and information listed below. Unless otherwise noted, Orkin will produce documents only for California and Arkansas, only documents related to subterranean termite services, and documents created or used between January 1, 1999 to June 30, 2008. We believe these parameters are reasonable given that the classes are restricted to California and Arkansas, and the longest statute of limitation applicable to any claim is four years for California and six years for Arkansas. Moreover, while we currently believe that such documents do exist, to the extent that they are not found after a diligent search, they, obviously, will not be produced.

Class Size Data

- Plaintiffs have requested a sampling of Orkin files and have proposed a protocol for identifying such a sample. Without expressing a view at this time as to the propriety of such sampling protocol, Orkin would agree to adhere to the following protocol requested by plaintiffs' counsel during the meet and confer process: Orkin will randomly select, using a randomization program selected or approved by plaintiffs, one claim that arose in the first quarter of each year between January 1, 1999 and June 1, 2008 in northern California and one claim that arose in the third quarter of each year between January 1, 1999 and June 1, 2008 in southern California. (Plaintiffs have not yet proposed a protocol for Arkansas). As used in this paragraph, a "claim" means a claim for property damage based on a contract entered into between Orkin and a residential customer for the treatment of subterranean termites. Once the claim has been identified using this protocol, Orkin would produce a copy of the paper file maintained in the branch, a paper claims file, if any, and any records maintained in FOCUS or OSCAR relating to the treatment at issue or the claim (Doc. Req. 1).
- List of customer identification numbers for residential subterranean termite customers in Arkansas and California who had contracts with Orkin for residential subterranean termite treatment services, which were



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entered into between January 1, 1999 and June 1, 2008 to the extent that such numbers are reasonably retrievable based on Orkin's computer records (Interr. 1).

- List of residential subterranean termite customers in Arkansas and California who commenced litigation (other than small claims) or initiated arbitration against Orkin, if any, between January 1, 1999 and June 1, 2008 based on a contract for the treatment of subterranean termites (Interr. 2).

Contracts, Rate Information, and Marketing Materials

- Exemplars of form residential subterranean contracts used in California and Arkansas between January 1, 1999 and October 2003 (Doc. Req. 3, 26, 31).
- Rate cards used for pricing residential subterranean termite jobs in California and Arkansas between January 1, 1999 and October 2003 (Doc. Req. 7, 30, 31).
- Sales brochures used in California and Arkansas between January 1, 1999 and October 2003 for residential subterranean termite services (Interr. 14; Doc. Req. 3, 26, 27, 29, 31).
- Guarantee matrices found in manuals available for use in California and Arkansas between January 1, 1999 and October 2003 (Doc. Req. 28, 31, 32, 33).
- Additional manuals (to the extent not already identified above) containing exemplar releases that may have been used in the course of Orkin's residential subterranean termite treatment business in California and Arkansas between January 1, 1999 and October 2003 (Interr. 3; Doc. Req. 4).
- Exemplar inspection report forms (to the extent not already identified above) that may have been used in the course of Orkin's residential subterranean termite treatment business in California and Arkansas between January 1, 1999 and October 2003 (Doc. Req. 25).



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- Information related to acquisitions of termite and pest control companies in California and Arkansas between January 1, 1999 and October 2003 (Interr. 21).
- Annual relevant product information memoranda dated between January 1, 1999 and October 2003 (Doc. Req. 9).

Additional Policy & Procedure Documents (Interr. 10-13, 17; Doc. Req. 2, 4, 10-16, 20, 21, 23-26, 31)

- Termite Treatment Expectation Manual revisions (January 1, 1999 to October 2003)
- Focus Administration Manual revisions (January 1, 1999 to October 2003)
- General Office Procedure Manual (January 1, 1999 to October 2003)
- Orkin Professional Initial Termite Control Training Manual (January 1, 1999 to October 2003)
- Initial Termite Treatment Control Training Certified Field Trainer Handbook (January 1, 1999 to October 2003)
- Service Manager(s) Manual (January 1, 1999 to October 2003)
- Branch Manager Manual (January 1, 1999 to October 2003)
- Region Manager Manual (January 1, 1999 to October 2003)
- Sales Training Manual (January 1, 1999 to October 2003)
- Additional Service Alerts (January 1, 1999 and October 2003)
- Additional Technical Bulletins (January 1, 1999 to October 2003)
- Additional Lesson Plans (January 1, 1999 to October 2003)



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- Identification of name, active ingredients, and manufacturers, as well as labels for subterranean termiticides and baiting systems used at residential properties in California and Arkansas (termiticides only) during the time period January 1, 1999 and October 2003 (Interr. 8, 9; Doc. Req. 8).
- Core criteria regarding compensation programs (by job type, not for individual employees) for termite inspectors, termite service managers, and branch managers between January 1, 1999 and October 2003 (Int. 19, 20, Doc. Req. 48).

Audits & Financial Information

- Annual Financial Reports for Rollins, Inc. (Form 10-K) for 1999 through 2002 (Interr. 7).
- Quality Assurance audits that review work done at the properties of the named plaintiffs (if they exist) (Interr. 10; Doc. Req. 6).

III. Document Production Regarding Named Plaintiffs.

In your emails dated May 21 and 22, 2008, you raised several issues with respect to our production of the named plaintiffs' customer files. (1) First, you asked for production of the "claims files" for each of the named plaintiffs. Because none of the named plaintiffs have made claims, no such claims files exist. (2) Second, you asked for the RAC file (*i.e.*, the financing documents) for each of the named plaintiffs. The retention policy for such documents is three years. Because all of the named plaintiffs entered into contracts more than three years ago, those documents no longer exist. (3) Third, you asked for the "Quality Audit File for 12/12/2002 audit reflected on KRZ 0060." The document produced at KRZ 0060 is simply the reverse side of a termite service report and is not an official "audit" performed by the branch or by the Termite Compliance Group. Any documents related to a branch audit of work performed on the named plaintiffs' property, if they existed, would have been contained in the customer branch file that was produced. (4) Fourth, you asked for the "daily route sheets for the technicians and others who serviced the property" of the named plaintiffs. The search for and production of such documents would be unduly burdensome, particularly given their limited (if any) relevance. (5) Fifth, you asked for "the GPS



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records for the vehicles." Similar to the daily route sheets, a search for documents related to vehicles that traveled to the named plaintiffs' properties would be unduly burdensome. (6) Finally, you asked for "a copy of the report provided to the county office for each occasion that the property was placed under contract." We are still investigating the methods by which those documents are retained, and will agree to produce monthly reports provided to the appropriate government entity for the branches that serviced the named plaintiffs' property, dated between October 2003 and the present, to the extent that they exist.

IV. Status of Remaining Document Requests and Interrogatories Based on Meet & Confer Process.

Regrettably, after many hours of meetings, the parties were unable to agree as to the proper scope of the production with respect to many of the requests. The parties were able to reach some agreements: (1) Plaintiffs agreed to hold in abeyance Document Requests 41 and 42 (monthly reports of pesticide use) if Orkin would identify the period of time that we maintain these records, and 43 (job logs) as long as the information requested could be found in customer files.¹ (2) Plaintiffs conceded that their definition of "things" in the document requests does not include tools, devices, or other items physically used in connection with termite treatment and inspections; and (3) Plaintiffs agreed to withdraw the portion of each document request that requested Orkin to "identify" certain things in light of Orkin's objection that the request to "identify" something in connection with a document request was an improper interrogatory.

To try to bridge the gap between the parties, Orkin suggested a document custodian approach to the production, but that was rejected. Orkin also urged plaintiffs to be more precise in their requests to provide each request with a reasonable limit so Orkin would not have to guess as to its proper scope, but that, too, was rejected. Plaintiffs expressed concern that wherever they agreed to a limit, Orkin would take advantage of it and withhold documents from production. We explained repeatedly that Orkin would not do so and, importantly from plaintiffs' perspective, could not do so, given that: (1) plaintiffs' counsel already has extensive familiarity with Orkin's documents based on prior litigation and the pest control industry; (2) plaintiffs can confirm the scope of the production through depositions of document custodians and

¹ See also *Sheppard* Document Requests 41, 42, and 43.



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fact witnesses; and (3) plaintiffs can serve supplemental requests if they previously overlooked a category of documents. Plaintiffs rejected these ideas as insufficient, even though they are the ordinary tools of discovery.

Based on the meet and confer and subsequent discussions with our client, we set forth below the current status of document requests and interrogatories on which the parties cannot reach agreement:

Interr. 3 and Doc. Req. 4. Plaintiffs requested copies of releases by members of the putative class who have released their claims and therefore are not members of the class. Orkin has already agreed to produce manuals containing exemplar release forms. During the meet and confer, Orkin explained the difficulty in obtaining individual copies of all of the requested executed releases, and offered to work with plaintiffs informally on calculating an approximate number of Orkin customers who executed a release and, therefore, who are unlikely to be a member of the class. Plaintiffs rejected Orkin's offer.

Interr. 4, 5 and Doc. Req. 5. Plaintiffs have requested that Orkin state every breach of contract claim it has against all putative class members. Orkin objected and explained that it could not do so absent a file-by-file review, interviews with Orkin employees and homeowners, and a property inspection conducted by Orkin's experts. During the meet and confer, the parties discussed a possible compromise in which Orkin would re-state the breach of contract defenses that could be asserted based on the contracts at issue in the case. Given that Orkin has already agreed to produce exemplar form contracts, pursuant to Fed. R. Civ. P. 33, plaintiffs can review for themselves the types of contract defenses Orkin may raise.

Interr. 6 and Doc. Req. 7. Plaintiffs have requested a detailed accounting of the alleged damages for the putative class. Orkin objected. During the meet and confer process, Orkin agreed to provide a narrative about the system capabilities to identify and quantify the monies paid by putative class members and then work with plaintiffs to gather such information if and when a class is certified. (Orkin has also agreed to produce its rate cards used between January 1, 1999 and June 1, 2008.) Plaintiffs rejected the offer because they said the information was relevant to whether a class should be certified under Fed. R. Civ. P.



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23(b)(1)(B). Given that there is almost certainly no risk that a claim of an individual class member "could substantially impair or impede" the ability of the putative class to recover money from Orkin, Rule 23(b)(1)(B) is inapplicable.

Interr. 7. Plaintiffs requested financial information about Orkin. Orkin agreed to produce various financial statements reflected in the annual reports of its parent company, Rollins, Inc. Orkin does not, however, maintain separate financial statements. Orkin will, therefore, stand on its objections and produce only the annual reports of its parent company, Rollins, Inc.

Interr. 10-13, 17 and Doc. Req. 2, 4, 10-16, 20, 21, 23-26, 31. These interrogatories and document requests seek information about a variety of treatment, inspection, baiting, sales, and training policies and practices. Orkin has already produced numerous documents that reflect Orkin's general policies and practices regarding the treatment of subterranean termites in California. (See Focus 1-3540; K-LP 1-2733; K-SA 1-274; K-TB 1-268; TTEM 1-979). In addition, to the extent Orkin has not already done so, and to the extent that the following exist, Orkin will make available for inspection and copying at a mutually agreeable time and place the Orkin: (1) Termite Treatment Expectations Manual; (2) FOCUS Administrative Manual; (3) General Office Procedure Manual; (4) The Orkin Professional Initial Termite Control Training Manual; (5) Initial Termite Treatment Control Training Certified Field Trainer Handbook; (6) Service Manager(s) Manual; (7) Branch Manager Manual; (8) Region Manager Manual; (9) Sales Training Manual; (10) Service Alerts; (11) Technical Bulletin; and (12) Lesson Plans, dated between January 1, 1999 and June 30, 2008. Plaintiffs claim that Orkin's production is deficient but, when pressed, plaintiffs offered only very discrete examples, which they expressly claimed were not exclusive and, therefore, provided no basis for resolving the dispute. Plaintiffs would not agree to any reasonable limits on the requests that would have permitted Orkin to make a more meaningful response. Orkin, therefore, stands on its objection.

Inter. 14 and Doc. Req. 29. Plaintiffs requested in discovery virtually all Orkin advertising. Orkin objected because, among other reasons, the named plaintiffs do not claim to have based any decision regarding Orkin on any Orkin advertising other than perhaps the marketing materials that Orkin gave them at the point-of-sale. (Indeed, plaintiffs in the California action do not recall seeing



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any Orkin advertising other than perhaps the point-of-sale materials, which Orkin has agreed to produce.) Plaintiffs do not have standing to sue for alleged advertising that they neither saw nor heard.

Inter. 15, 16 and Doc. Req. 38, 39, 40. Plaintiffs requested information about investigations by any governmental entity on virtually any topic, even if completely unrelated to the allegations of the complaint. Orkin objected but noted that, other than routine inquiries a pest control operator may receive from time to time in connection with a particular customer question or complaint or a routine branch inspection by a government agency, neither the State of California, including the State Attorney General, the Structural Pest Control Board, nor the California Environmental Protection Agency have undertaken any investigation of Orkin's termite treatment business or practices in California between October 2003 and the present. By this letter, Orkin confirms that this statement is true since at least January 1, 1999. Similarly, neither the State of Arkansas nor the Arkansas State Plant Board have undertaken an investigation of Orkin's termite treatment business or practices in Arkansas since January 1, 1999, other than routine inspections of branches or inquiries received from customers.

Interr. 18. and Doc. Req. 47. Plaintiffs requested information about Orkin's procedures and policies for substantiating their advertisements. Plaintiffs have no standing to challenge any advertisements, so the substantiation for such advertising would be completely irrelevant for even discovery purposes. Moreover, given the wide variety of procedures and processes for substantiation based on the type of claim being made and the type of advertisement, Orkin cannot provide the requested information without a more particular identification of the certain advertisements upon which plaintiffs request such information.

Inter. 19, 20 and Doc. Req. 48. Plaintiffs requested information about the compensation of various employees. Orkin agreed to provide documents sufficient to show core company criteria regarding compensation programs for termite inspectors, termite service managers, and branch managers. Plaintiffs requested during the meet and confer that Orkin produce compensation information all the way up to the CEO. The parties could not agree on an



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appropriate compromise, even on an interim basis, and therefore Orkin stands on its objection.

Inter. 21 & Doc. Req. 35-37. Plaintiffs requested information and documents regarding contracts Orkin purchased from other companies. Orkin has already identified the names of the companies from which it purchased other contracts. Additional information is irrelevant because the terms of termite contracts entered into by other companies, and their performance under those contracts cannot be within the scope of the class; the named plaintiffs, who contracted only with Orkin, do not have standing to represent customers of other companies. Plaintiffs contend otherwise. Given the parties' disagreement, Orkin stands on its objections.

Doc. Req. 3, 27. Plaintiffs asked for exemplars of various documents given to customers, which Orkin agreed to produce from October 2003 to the present and, after conferring with plaintiffs' counsel, agrees to produce from the expanded period of January 1, 1999 to June 1, 2008. The parties' disagreement turns largely on the date parameters.

Doc. Req. 6. On certain occasions, branch managers or service managers perform a quality audit of a particular job. Those audits are maintained in the customer files, to the extent they exist. The named plaintiffs do not appear to have been subject to any such branch audit. It would be unduly burdensome to search each customer file to obtain other branch audits related to jobs performed at the properties of the putative class members. Additionally, the Termite Compliance group (Chris Gorecki's group) has conducted quality assurance audits at certain times. To the extent that any of these audits reviewed work done at the properties of the named plaintiffs, we will agree to produce such audits (if they exist). To the extent that plaintiffs are requesting audits not related to the named plaintiffs' property, Orkin stands on its objections.

Doc. Req. 9. Plaintiffs requested documents showing the criteria used to choose one termiticide product over another at a property. Subject to its objections, Orkin agreed to produce various treatment and training manuals, the chemical labels, and product information memoranda. Even after the meet and confer, it is unclear what additional information plaintiffs want.



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Doc. Req. 17, 18, 19. Plaintiffs requested documents regarding termiticide usage. Orkin explained that the records of termiticide usage are found in individual customer files and that such files are irrelevant prior to class certification. Orkin will agree, however, to produce Monthly Material Inventory Sheets for the past three years (which is the document retention period for such documents) for the branches that serviced the named plaintiffs' properties.

Doc. Req. 22. This request seeks a virtually unlimited number of documents that could not be identified and produced without extensive interviews with an unspecified number of Orkin employees. Plaintiffs would not agree to any limitations on the request. As such, Orkin stands on its objections.

Doc. Req. 28, 32, 33. Plaintiffs requested information about the criteria used by Orkin to determine what type of guarantee a property may qualify for. As per its document responses and this letter, Orkin has already produced the guarantee matrices found in Orkin's manuals (e.g., Termite Treatment Expectation Manuals) in effect between January 1, 1999 and June 1, 2008. It is unclear whether plaintiffs had reviewed these documents at the time of the meet and confer. Orkin believes these documents sufficiently respond to Document Requests 28, 32, and 33.

Doc. Req. 30. Orkin has already agreed to produce rate cards, which Orkin believes sufficiently respond to Document Request 30.

Doc. Req. 34. Orkin still does not understand what plaintiffs are seeking in this request which asks for, in relevant part, "DOCUMENTS ... relating to DEFENDANTS' policies, practices and procedures ... for determining the duration of WDO SERVICE contracts." Therefore, Orkin stands on all of its objections.

Doc. Req. 45, 46. Plaintiffs seek documents regarding Orkin's compliance with Cal. Bus. & Prof. Code 8565 generally and 8565(c) in particular. Defendants objected. Section 8565 lists the topics upon which the Structural Pest Control Board shall determine that a license applicant is qualified. Section 8565(c) lists the board-approved courses that an applicant for a Branch 3 operator's license is



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required to pass. Given that there has been no allegation that any Orkin employee did not meet these requirements, Orkin stands on its objections.

If you have any questions about the discussions herein, please contact us. Otherwise, the parties should proceed to the filing of motions on the requests upon which the parties continue to disagree.

Sincerely,

A handwritten signature in black ink that reads "T. Robert Scarborough / kin".

T. Robert Scarborough

cc: Douglas B. Brown
Mark Eisenhut